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DISPOSITION OF SEIZED CASH AND PROPERTY

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SPENDING, BUDGET, AND ACCOUNTING

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

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DISPOSITION OF SEIZED CASH AND PROPERTY

THURSDAY, JUNE 23, 1988

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SPENDING,
BUDGET, AND ACCOUNTING,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:40 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Lawton Chiles, Chairman of the Subcommittee, presiding.

Present: Senator Chiles.

OPENING STATEMENT OF SENATOR CHILES

Senator CHILES. Today, the Subcommittee will continue its series of hearings on the disposition and accountability of property and cash seized by the Federal Government in its forfeiture programs.

After three previous hearings by the Subcommittee, I am hopeful that today's hearing will demonstrate that there is light at the end of the tunnel.

We started this investigation with a hearing in Miami after we asked the General Accounting Office to conduct an audit on the disposition of seized vessels by the Customs Service that were rotting in the Miami River. The presence of many of these ships had transformed the Miami River from a scenic waterway to a floating junk yard. The economic aspect was equally as bad. The Government was paying thousands of dollars for storage fees, and because the boats were often in such a deteriorated condition, the prices that we got were often less than the storage expenses. So in those instances, the Government was actually losing money.

Later, we found that the Government was losing money on seized cash. In hearings held a little over a year ago, the Subcommittee learned that hundreds of millions of dollars were basically unaccounted for. The General Accounting Office was able to detail instances of processing errors, carelessness and mismanagement which delayed proper accountability of the cash for years. Many of the records on the seized cash were in disarray or were totally absent, making it virtually impossible to accurately learn the extent of the excess cash existing in vaults and safes.

State and local officials who assisted in drug busts sometimes had to wait long periods of time to receive their share of funds from the forfeiture funds.

In September of 1987, the Subcommittee focused on the disposition and management of seized property. Again, the level of mismanagement added to the problem and was not a part of the solu-

tion. The Marshals Services—the agency which has primary custodial duties for seized property—simply may be in over their heads. Clearly, from testimony we have heard, brokers or outside agents may be a more effective way of assuring that the Government realizes an economic gain from some of these properties.

During this series of hearings, the General Accounting Office made specific recommendations as to how Congress could establish greater Government accountability or controls over administration of these assets. Stricter controls or improved oversight of the forfeiture funds become especially important as Congress continues to provide agencies with the tools to enlarge that body of forfeitable assets. In fact, we can see that the value and number of assets and cash seized is growing by leaps and bounds.

In response to the GAO's recommendations, we have crafted several proposals included in a Democratic Task Force anti-drug bill, which will soon be introduced. These proposals impose stricter annual reporting requirements on the Department of Justice and the Customs Service as well as requiring annual audits of the forfeiture funds. Another provision amends current law to authorize payments from the forfeiture fund for employment of attorneys and other personnel skilled in State property law to take the steps necessary to clear title, conduct title searches, or otherwise comply with State legal requirements regarding disposition of property involving third-party interests in seized assets. I have also taken steps to change current law so that the Customs Service will no longer have to net expenditures and receipts, a past accounting problem.

I invite those in attendance to comment on those provisions.

Finally, I support the forfeiture program. I especially like the ironic touch of funding the construction of prison facilities with moneys confiscated from the drug dealers themselves. A local newspaper called it "poetic justice"; I agree. It is the kind of poetry that is easy on the ears.

Our first witnesses today will be from the General Accounting Office. We welcome you, Mr. Dodaro, and your compatriots. We thank you for your continued efforts in this regard. Your counsel has been extremely helpful to our overview of the problems.

I know you have also been generous with your time in helping my staff with forfeit initiatives that I am trying to include in a drug proposal. Your expertise has been most helpful, and we thank you for that.

TESTIMONY OF GENE L. DODARO, ASSOCIATE DIRECTOR, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY SEBASTIAN CORREIRA AND JAMES BLACK

Mr. DODARO. Thank you, Mr. Chairman, and good morning.

We are pleased to be here today to discuss the asset forfeiture programs. With me is Mr. Sebastian Correira on my left and Mr. James Black on my right, who have conducted our reviews of these programs, as you may remember from prior hearings.

Senator CHILES. Yes. I recognize both of them from our past dealings, and I thank them specifically for their help.

Mr. DODARO. With your permission, I would like to have our detailed statement entered into the record [1] and briefly summarize our observations.

Senator CHILES. Your statement in full will be a part of the record.

Mr. DODARO. Thank you.

Because of your continuing interest, Mr. Chairman, as demonstrated by this hearing and earlier ones, substantial improvements to asset forfeiture programs have been made in the past 3 years. For example, policies and procedures have been established for handling of seized cash, and at least $230 million have been deposited into appropriate Treasury holding accounts since we first brought this issue to the agency's attention. Customs has also corrected the seized vessel storage problems it had on the Miami River and is now forfeiting and disposing of seized vessels more quickly.

Justice also has issued guidelines to authorize the use of private legal counsel to help resolve title problems and has revised procedures to improve documentation of its efforts to notify parties with interest in forfeited properties. Customs and Justice have also strengthened controls to ensure that forfeited property retained for official use is used appropriately.

Such actions demonstrate that the agencies are making a good-faith effort to correct these problems, and the overall responsiveness to our recommendations has been good.

Certain problems, however, still need to be resolved, and I would like to focus on those this morning. Three areas, in particular, I would like to discuss.

First, there needs to be better agency monitoring to ensure that the newly established policies for seized cash are adhered to. Second, Justice needs to adequately consider and monitor defendant equity in seized real property. And, third, as you noted in your opening remarks, legislative changes are needed to improve Customs' forfeiture fund accounting and reporting.

Let me first talk about seized cash. As you noted, the agencies, following our 1987 review, have begun depositing cash that was being held unnecessarily as evidence, and they have established policies to require Justice headquarters to approve cash being held as evidence. A year later, following up on compliance with this newly established policy, we learned Customs was holding $57 million as evidence. After bringing this to Customs' attention, it reclassified $38 million as non-evidentiary and deposited that amount in the Treasury fund.

In June 1988, Customs' and Justice's national records showed that they were holding $75 million as evidence. Justice headquarters, however, had approved holding only $5 million as evidence. We are following up with Justice and Customs to determine why there is such a large difference between the amount of money being held and the amount that has been approved to determine whether or not the money is being still held unnecessarily and not needed for evidence.

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[1] See p. 25.

To minimize the unnecessary holding of seized cash as evidence, and to make sure that the newly established policies are complied with, we think better agency monitoring is needed. We are also recommending that the agency's annual forfeiture fund reports include the amount of seized cash being held as evidence at year end.

Now, I would like to discuss our observations on Justice's management of real properties. There are three basic issues here. First, Justice has experienced problems in selling properties in part because insurance companies were reluctant to insure title to forfeited properties. Without title insurance, most property buyers are unable to obtain the financing needed to secure purchase of the property.

Justice is developing legislation allowing the Attorney General to reimburse title insurers for title defects rising from Justice's forfeiture processing. This, along with other changes Justice has implemented, should enhance Justice's ability to sell this property. So we think that is a good first step.

Second, Justice needs information on real property defendant equity to properly manage its inventory. Justice is developing an information system which, according to agency officials, will provide such information. However, the system is not anticipated to be fully operational until 1990. In the interim, we are recommending that Justice keep defendant equity information on large seizures over $1 million so they at least have that information on the large properties until they get their system up and running.

Third, Justice's economic criteria for determining when it is economically worthwhile to seize real property is too low and contributes to the seizing of unprofitable properties. Justice, however, does not agree and has not revised this criteria. Such revisions, in our opinion, are necessary to recognize defendant's equity and the costs that could be incurred in the processing and selling of property.

Now, I would like to turn to the last area dealing with the Customs fund accounting and reporting. We have previously recommended that Customs bring its fund accounting into conformance with Comptroller General's requirements. As you mentioned in your opening statement, legislative proposals are being drafted to implement this recommendation. We also urge that the carryover balance in Customs' fund be reduced from $20 million to $10 million, and that annual audits be performed on both Customs' and Justice's funds.

In closing, although there are problems still needing attention, overall there has been much progress in the past 3 years. This has been due to your efforts and the efforts of other members of the Congress, as well as persons within Justice and Customs.

That concludes my summary remarks, and we would be happy to answer any questions.

Senator CHILES. I have listed in general terms some of the recommendations that GAO has proposed. I would like to know whether GAO could support authorization for payment of certified and capable attorneys and real property experts who could help the Marshals Service in properly and promptly selling the real property that they are holding.

Mr. DODARO. We are in support of that, Mr. Chairman. We think that that is an important provision that would give them the opportunity to get the expertise that they need.

As we noted last September, the U.S. attorneys always are not able to be up to speed on the local property laws, which may vary depending upon each State and local jurisdiction. So that provision would give them the flexibility to augment their people with the necessary expertise.

Senator CHILES. Well, as you know, we have a mobile park home that was seized in Lakeland, Florida, my home town. Value when seized was $3,020,000. Liens and costs on it are $3,600,000. That is a projected net loss of $580,000. And we are still sort of sitting on that property. It was seized in January of 1986. We talked about it in our hearings in September of 1987. It is still in inventory. My understanding is that as of June 23, 1988, it is still in inventory.

Another provision would be a requirement of an annual audit of the forfeiture fund.

Mr. DODARO. Yes. We are totally in support of that, Mr. Chairman.

Senator CHILES. And an amendment to current legislation which would allow Customs to comply with GAO's accounting principles.

Mr. DODARO. We are fully supportive of that as well.

Senator CHILES. In previous hearings, you testified that according to GAO's investigation, neither the Customs Service nor the Justice Department had national or standardized plans for processing seized cash in a manner that would provide the best economic advantage to the Government. Does GAO now believe that the agencies have a national plan and that they are following their plan?

Mr. DODARO. We think both Customs and Justice have developed national plans and policies on the management of seized cash, and they are doing a better job of depositing the money. However, it does not appear that there has been full compliance across the field offices. As we noted in our statement, some of the money still apparently is being held not in concert with these newly established policies.

So we think there needs to be better monitoring to ensure that the policies are adhered to.

Senator CHILES. They now have a plan, but the question is how well they are following the plan.

Mr. DODARO. That is correct.

Senator CHILES. According to your testimony, Customs and Justice have both established new policies to minimize the necessary holding of cash as evidence. But they were still holding $75 million in cash, $70 million of that without proper authorization.

Did either of those agencies have an explanation for this situation?

Mr. DODARO. Yes. Customs officials they acknowledged that some of their field personnel were not fully aware of, or understood, the newly established policies. As a result, they were holding on to some of the money. Additionally, they were receiving some verbal authorization from the U.S. attorneys as opposed to what the new policy requires—written approval.

Justice also acknowledged that the new policy had not been totally understood yet by the field personnel. In addition, they men-

tioned that there are some questions about the accuracy of the national inventory records. So in some cases, some part of that $75 million might be just an inventory problem in terms of not having accurate information.

We are working with them right now to try to identify whether that is a problem or not.

Senator CHILES. And you are following up on that, working with them?

Mr. DODARO. Yes.

Senator CHILES. Collectively, DEA and Customs have deposited $232 million into the U.S. Treasury, producing a $23 million savings. At a previous hearing, one of our witnesses expressed doubt that there was any economic benefit to be derived from timely deposits of seized cash. How did GAO compute the savings, and are you satisfied that your figures are accurate?

Mr. DODARO. We computed the amount based on the average balance in the holding accounts times the average borrowing rate from the Treasury Department. That is consistent with how Justice has computed the savings on its fund. We are confident that our calculations are accurate and as reasonable as can be expected. So we are satisfied that it is accurate.

Senator CHILES. There are savings to be had?

Mr. DODARO. Yes.

Senator CHILES. As opposed to having the money out in a drawer somewhere, putting it into a bank where it can draw interest does make a savings?

Mr. DODARO. That is correct, Mr. Chairman.

Senator CHILES. You are more than reasonably sure of that.

Mr. DODARO. Yes, I am.

Senator CHILES. Thank you.

GAO was effective in getting the Justice Department and Customs together on the reclassification of some $32 million. They then put that money into the Treasury. How do we get Customs and Justice cooperating without the presence of GAO?

Mr. DODARO. I think what needs to be done, Mr. Chairman, is to get Justice and Customs to more aggressively monitor seized cash. They need to reconcile the information that is in the vaults, in terms of how much cash is there, with how much they have authorized for the agencies to hold onto. So there is a reconciliation, and the amount of money that has not received approval should then be questioned and followed up on to determine why they are holding on to that money.

What we plan to do is try to work with them to come up with a procedure where this reconciliation could be done on a regular basis. If that can be done, it should trigger questions to ensure that the policies are being complied with.

Senator CHILES. In previous hearings, we examined the need for the Marshals Service to do better title searches and provide better information before going to auction on the property. Your testimony today seems to suggest that that particular problem has not really been resolved. Is that correct?

Mr. DODARO. In some limited follow-up work we did, we did notice some problems still there. But we think they have made some important changes. One, they have authorized the use of pri-

vate counsel to provide expertise. Secondly, they are requiring better documentation and notification to third parties with potential interest in the properties. They are also, as I mentioned in my statement, developing legislation to guarantee that they would stand behind any problems arising from their processing of the cases and provide assistance if it would result in a title problem.

We think those changes will help in the future, but it is like the seized cash situation. Policies are being established now to correct the problem, and a lot will depend on how aggressively Justice implements those policies and then follows up to assure that they are adhered to. But we think they are setting the right types of things in motion. It will just be a question of time to see whether it helps correct the problem or not.

Senator CHILES. You commented on the effectiveness of congressional oversight in cases involving DEA. Has Congress been as active in oversight of the Customs?

Mr. DODARO. I think one of the factors that has limited the Congress's ability to provide oversight of that fund has been the netting practice, which you mentioned earlier in your statement. I think once legislation is passed to eliminate that practice, Congress will get additional information and be able to provide better oversight of the fund.

Senator CHILES. Why don't you explain for us, if you can, as simply as you can, what the netting procedure has been? And what's wrong with it?

Mr. DODARO. What that essentially involves is an item-by-item examination of what goes into the fund. In other words, rather than having all the revenues and all the expenditures for the fund recorded, as is normal accounting practice, the only thing that gets recorded into the fund is the specific net proceeds on an item-by-item basis. So say there are 10 items in the fund and they are sold individually, one item is sold for $3 million and had $2 million of cost, only $1 million would go into being reported as an activity in that fund, as opposed to generally accepted accounting practices that would require a recording of $3 million as revenue received and——

Senator CHILES. So what you are saying is really Congress never has the ability to say, "wait a minute, you lost money on that," or "you only made a certain amount," or "why did that one take so long when you had that much equity." So if the property had a value of $1 million and the costs ended up $1,300,000, it would never show.

Mr. DODARO. That is correct.

Senator CHILES. So you would never know that they had not handled it properly.

Mr. DODARO. Right.

Senator CHILES. On the other hand, if it was a $2 million piece of property and because they waited so long and let the expenses go to $1,800,000, it still shows a $200,000 asset; there would be nothing there to say that, wait a minute, that should have been worth a lot more if you had not allowed all the time to go by.

Mr. CORREIRA. Senator Chiles, excuse me. I have got laryngitis this morning. But in the example that Mr. Dodaro gave of the $2 million of expenses, those $2 million of expenses would not be re-

flected in the fund at all. So at the end of the year, you may show $8 million of expenses for running the program, when really it was $18 million or $20 million of expenses. So it does not reflect full disclosure of what is happening in the program.

Senator CHILES. It makes it sound like no matter what you ended up with that that was a net, but it does not show what your costs were for trying to get that.

Mr. DODARO. Right. It would be the equivalent, if you were running a business, of just recording what your profits would be without totally recording what all your receipts would be and what your expenses would be.

Senator CHILES. Okay. What we are talking about doing is changing that and getting them back to general accounting practices.

Mr. DODARO. That is correct, where there is more complete reporting.

Mr. CORREIRA. Senator Chiles, Customs' position has been that their authorization to net goes back to the Trade and Tariff Act of some years ago, 1930, and they have always done it. And when the fund was established, it referred to netting; so they feel they have a legislative requirement that they have to net, which is why we indicated, well, if that is the case, why don't we change the legislative requirement.

Mr. DODARO. And Customs is in full agreement with changing this requirement.

Senator CHILES. So there is no resistance. It is just their feeling that under the existing practice or law that they are required to do this?

Mr. DODARO. That is correct.

Senator CHILES. Each time we have asked GAO to review the agency's procedure, either in seized cash or seized property, it seems that at that time the agencies generally things do get a lot better. I am afraid when you all go away things kind of go back to business as usual.

I wonder if there is a way, again, of correcting that, trying to find a way to correct that. Annual audits would certainly help.

Mr. DODARO. I think that would be a big step, Mr. Chairman. The amendments that you are proposing in the bill will go a long way towards permitting better oversight of the operations. If you have stricter reporting requirements and an annual audit, you have better information and full disclosure. It should then be easier to oversee the activities.

Senator CHILES. I take it that it also should be a given that there ought to be meetings before the annual audit between Customs and Justice to go over these items.

Mr. DODARO. In terms of what would be looked at, yes. That would be a good idea.

Senator CHILES. Well, if some of you can, we hope you might stay around for the rest of the hearing.

Mr. DODARO. We would be glad to.

Senator CHILES. You may want to comment. Thank you very much. We again thank you all for your work that you continue to do in this regard. I would like to recognize the work you've done by placing the names of the individuals who worked on this project into the Congressional Record.

[The list of individuals referred to follow:]

General Government Division: Gene L. Dodaro, Sebastian Correira, James R. Black, Roger L. Lively, Theresa M. Roberson, Vanessa D. Harrison, Richard J. Morvillo.

Los Angeles Regional Office: Leyton G. Morgan.

Mr. DODARO. Thank you, Mr. Chairman.

Senator CHILES. Our next witness will be Mark Richard of the Justice Department. Mr. Richard is the Deputy Assistant Attorney General, Criminal Division.

Mr. Richard, we welcome you and are delighted to have you here today.

TESTIMONY OF MARK M. RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. RICHARD. Thank you, Mr. Chairman. With your permission, I would like to submit my full statement for the record and merely summarize it, if that is agreeable with you, sir.[1]

Senator CHILES. It will be placed in the record, yes.

Mr. RICHARD. Thank you, Mr. Chairman.

I appreciate the opportunity to appear this morning to discuss the continuing efforts of the Department of Justice in the area of seized cash management as well as the disposition of seized property. I currently am a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice, and for the past 3 months have had oversight responsibility for the operations of our asset forfeiture office. And I also chair the department-wide asset forfeiture policy committee.

As already mentioned by the previous witnesses, we have revised our policies and procedures for handling seized cash to ensure that it is deposited as soon as possible into the seized asset deposit fund, the Treasury account, where non-evidentiary seized cash is held pending forfeiture.

Before passage of the 1984 Comprehensive Crime Control Act, we counted Federal forfeitures in the tens of millions of dollars. Today, Mr. Chairman, as you know, we count Federal forfeitures in the hundreds of millions of dollars.

Senator CHILES. That is good news.

Mr. RICHARD. That is.

In formulating our national policy regarding seized cash management, we agreed with this Committee and the General Accounting Office that much of the currency being held as evidence was not, in fact, strictly necessary for that purpose. It did not meet the standard of serving a significant, independent, tangible evidentiary purpose.

We must, of course, keep in mind that the Department's first priority should be to obtain convictions of drug traffickers and the like, and our cash management responsibilities must be pursued with regard for the fact that this is our primary duty—to investigate and prosecute drug trafficking and related crimes.

Senator CHILES. No disagreement on that, Mr. Richard. I agree with that 100 percent.

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[1] See p. 50.

Mr. RICHARD. We have, as indicated, promulgated regulations which went into effect May 1987, which require that seized cash be expeditiously forwarded to the United States Marshals Service for deposit in the Seized Asset Deposit Fund. In this way, we not only address the security problems inherent in holding large amounts of cash in numerous locations, but we ensure that the Federal Government could effectively earn interest on the money for as long as possible. Amounts deposited in the Seized Asset Deposit Fund are counted as cash on hand by the Treasury, thereby decreasing the Government's borrowing needs and accomplishing a net savings to the Government.

The directive, in order to address the evidentiary concerns of prosecutors, sets forth specific criteria for exemptions from the deposit requirement and also sets forth specific procedures for reviewing and approving their requests. Under the directive, a departmental component may be exempt from the transfer requirement, or a portion thereof, where it will serve significant independent, tangible evidentiary purposes, such as the presence of fingerprints on the money, packaging in an incriminating fashion, or the existence of a traceable amount of narcotic residue on the bills themselves.

By its terms, the directive requires the express written permission of the Assistant Attorney General of the Criminal Division for any exemption from deposit of amounts of $5,000 and above. If the amount of seizure is less than $5,000 the supervisory official at a U.S. attorney's office could grant the exemption.

Senator CHILES. Is that you? Are you the one that has to give that permission?

Mr. RICHARD. Not for $5,000 or below. That is done at the U.S. attorney's level.

Senator CHILES. Above that.

Mr. RICHARD. Above that, yes. That essentially is myself.

Senator CHILES. You are the person.

Mr. RICHARD. Right.

We believe that the initiatives set forth in this policy directive have met with considerable successes. In the 13 months since its promulgation, through May 31, 1988, over $273 million was deposited in the Seized Asset Deposit Fund. The average monthly deposits into the fund have more than doubled, from $8.4 million to $21 million. This unprecedented activity has increased dramatically the net cash balance in the fund by $116.7 million—from $87.6 million on May 1, 1987, to $204.3 million on May 31, 1988. The net cash balance since the beginning of fiscal year 1987 has more than quadrupled. We anticipate that the Treasury will realize an imputed saving of $13 million in fiscal year 1988.

Senator CHILES. That is a big number, Mr. Richard.

Mr. RICHARD. That is certainly so, Senator.

Senator CHILES. So what you are saying is from these policies now that are requiring aggressive deposit of these funds in interest-bearing accounts, and your signoff, if that is not going to be done, that you all are estimated that you saved at least $13 million in fiscal year 1988.

Mr. RICHARD. That is correct, Senator.

Senator CHILES. That seems to be a very worthwhile policy then.

Mr. RICHARD. Well, it has proven to be a very effective, efficient and appropriate policy for a variety of reasons, including obviously the cost-saving to the Government.

By way of illustration, it may be useful to point out that in terms of exemptions to the policy, since its inception we have granted only 13, totaling $5.95 million.

Senator CHILES. So when someone down there on the lower level has to think about it and determine whether they want your signoff or not to ask for an exemption, thus far in only 13 instances have they decided that they need to get the exemption, or that they even sought the exemption? Is that right?

Mr. RICHARD. Mr. Chairman, those are 13 instances where we have approved it. We have disapproved many exemptions that were sought by the U.S. attorney's office.

Senator CHILES. All right, 13 that you have approved.

Mr. RICHARD. That is correct. We have disapproved requests for exemptions where we did not find that there was a sufficient evidentiary justification for retaining the money outside of the fund.

Senator CHILES. I see.

Mr. RICHARD. It establishes the burden on the prosecutor to demonstrate to our satisfaction that there is a legitimate independent prosecutorial need to——

Senator CHILES. And if that reason is there, then you grant the exemption.

Mr. RICHARD. That is correct.

Senator CHILES. And we all think you should.

Mr. RICHARD. That is correct.

Senator CHILES. As you said, if fingerprints are on the money or some other reasons. But only in 13 cases have you felt that that was necessary.

Mr. RICHARD. That is correct. We encourage prosecutors where necessary to take videotapes of the seizure, if that is appropriate, or other measures that would not necessarily require retention of the money outside of the fund.

Senator CHILES. I note in your statement that you are saying that those exemptions have totaled about $5.95 million that have been approved by you.

Mr. RICHARD. That is correct.

Senator CHILES. But I also find from the GAO statement that there now is still about $75 million out there held that has not been deposited. So how do we account for that?

Mr. RICHARD. Well, my understanding, as mentioned by the GAO witnesses, is that $53 million of that was attributed to DEA, but upon analysis what seems to have happened is that Washington headquarters was obtaining the figure and entering it in its computer tracking system. But when those moneys or a portion thereof were being moved from retention to the fund, the Washington computer was not being effectively changed to reflect this transfer of the money.

After GAO raised the question, as they should have, as to the purpose of retaining so much money, in an examination done we find that I have just been advised the figure being held at the DEA regional level is a little more than $15 million and not $53 million. The FBI figure is approximately, I believe, about $3 million.

I think it is worthy of note that what we are dealing with is a revolving fund, a situation where moneys——

Senator CHILES. Right. Well, I will have to say that sounds like a more manageable amount; 75 when you have approved 5, it is hard to get your mind around. You are now saying 15 and 3. Do we know what Customs has?

Mr. RICHARD. I am not——

Senator CHILES. We will ask them.

Mr. RICHARD. I have the figures somewhere, and I am sure they can supply it, sir.

Senator CHILES. Right. Now, I understand that this is a revolving fund, and I know that will be a change. What I do hope is that you have a practice or a policy, and that is that you are sort of following up. It is one thing to say we have got a directive, people are supposed to follow it. It is another thing to say, fellows, we are following it. We are going to audit you, or we are going to find out what you have. If you have money in there that you have not gotten permission for, somebody is going to get their hand spanked for that.

Mr. RICHARD. Well, I think we have a capability of determining whether that policy is being effectively followed at the field level. Inasmuch as the headquarters will be in a position to know how much money their offices are holding on to, and since we know the level of exemptions being sought and being granted, we will be able to, in effect, have a barometer.

Senator CHILES. That is good. I hope your computer is somehow programmed that you are getting a printout of that; you know, that there is a bell or a whistle that rings on that.

Mr. RICHARD. Well, I would hope that we have that capability, and if we don't have it now that we reorder our computers to have that capability.

With your permission, I would like to turn now to briefly mention some of our initiatives with respect to property management. Here, too, as noted by prior witnesses, I think we have made significant improvements. Quite candidly, having been in my position at the Department of Justice for over 20 years, I must comment that I am personally impressed by the ability of the Government to establish a program in a very short period of time that administers such enormous amounts of assets in an extremely complex setting and does it so well.

There is certainly room for improvement. We welcome GAO's suggestions and constructive criticisms, as well as this committee's. But I think we have made significant improvements in the administration of the program.

As GAO pointed out in an earlier study 4 years ago, the Department could not report how much property was in its custody or what it was worth. Three years ago, after effectively implemented an automated inventory system, the Marshals Service was able to report an inventory of just over 3,000 properties, only 300 of which were real properties. As of May 31, 1988, the Marshals Service was managing over 15,000 properties nationwide, a 5-fold increase, including more than 1,500 real properties.

The Marshals Service uses a mix of Government and contract personnel to manage seized properties. The resulting property man-

agement costs continue to be less than 10 percent of the total income from forfeitures. For example, the Marshals Service recently awarded 2 contracts for the management and disposal of all aircraft seized by the Department of Justice. Through these contracts, approximately a hundred aircraft worth $116 million will be cared for. At the same time, the centralized contracts call for the Marshals Service to make an individual assessment of the conditions of each aircraft seized, and a case-by-case decision on whether to move the aircraft to a centralized facility or leave it where it is.

On the other hand, the Marshals Service manages virtually all cars seized by the FBI, DEA and INS through a series of individual local towing, storage, and sales contracts.

In other locations, the Marshals Service has negotiated arrangements with the General Services Administration for the towing, storage, and sale of seized and forfeited conveyances.

We believe that tailoring a mix of national and local contracts and Government and private services, according to the individual properties and according to the different types of properties, has resulted in large dividends to the forfeiture program. The flexible approach of using the appropriate mix of Government and private resources has proven successful and, in our judgment, should continue.

Similar to the approach in managing seized property, the Marshals Service also uses a variety of sales resources and techniques for disposal of property after forfeiture. Again, through contracts with the private sector, professional brokers and auctioneers are retained routinely to sell forfeited property. The Marshals Service has the flexibility to select the right sales strategy for particular assets to generate the best results and does not rely exclusively on one technique or agency to make decisions or carry them out.

Now, with respect to the disposal of real property, this committee has expressed concern with our procedures and operations, and justly so. Last September, you were advised of draft guidelines under development to govern the retention of private counsel by the Marshals Service to assist them as necessary in complex and difficult real estate transactions. I am happy to report that the Department has issues these guidelines authorizing the Marshals Service, when the local U.S. attorney concurs, to retain private counsel in certain situations, especially real estate transactions, when the requisite expertise in corporate, real estate, securities or banking law is not readily available within the Department of Justice. This, incidentally, will be especially helpful when dealing with a variety of State and local real estate laws and procedures.

We also recognize the need for legislation to clarify the Government's authority to warrant title in the sale of real property forfeited under the civil forfeiture statutes. Ensuring that the United States Marshals have the delegated authority to warrant title to any property forfeited under the laws enforced or administered by the Department of Justice will help purchasers of the property obtain title insurance, thus enhancing the marketability of forfeited real estate and presumably resulting in a greater net return to the United States.

We have heard GAO's concern about the inability of the Department of Justice to identify its potential net equity in forfeitable

property, and I believe we are adequate attempting to address this concern. Although the Marshals Service reports that it presently has in its custody approximately $250 million in real property, it must be understood that a portion of that $250 million represents the interests and equity of mortgage holders, lien holders, and other innocent third parties. We recognize that it is useful to know what the remaining potential net equity of the United State is, both in individual cases and in the aggregate.

The Marshals Service is currently upgrading its inventory and management information system and will be able to report on net equity when the new system is implemented. This automated Seized Asset Management System will be operating as a prototype in several locations before the end of the calendar year, and hopefully will be operating in most Marshals' offices before the end of the fiscal year 1989.

In the interim, the Service agrees with GAO that a reasonable effort should be made to aggregate information on the most significant properties. For its annual report to Congress on the fund, the Marshals Service will prepare figures on the equity of lien holders and other potential third parties and the remaining net equity of the United States for all properties with an appraised value of more than $1 million.

Nevertheless, it would be incorrect to assume that the issue of the Government's potential net equity is considered inconsequential or unimportant by the Department of Justice. I can assure the Subcommittee that we continue to view the area of pre-seizure planning to be absolutely essential to the success of a good forfeiture program, and pre-seizure planning includes an assessment of the Government's potential net equity, or liability. The procedures for determining whether it is economically worthwhile to seize a particular asset were set forth in guidelines issued to all U.S. attorneys in 1986. They require that, in advance of executing a seizure, where possible a rigorous review of known and potential third-party interests in a targeted property be identified, as well as other known or potential difficulties that would confront us in managing and ultimately disposing of the targeted property.

In addition, DEA and FBI apply identical minimum value thresholds for seizures of property for forfeiture. The violator's equity must be at least $2,500 for automobiles, $5,000 for boats and aircraft, $1,000 for cash, and $10,000 for real estate. While higher thresholds would tend to increase cost effectiveness, they would also tend to diminish the impact of the forfeiture program as an instrument of law enforcement.

Here I would suggest that we are confronted with the balancing situation, where we have to balance the cost, the burden on the judicial system, the prosecutors, the agencies and processing of forfeiture action, probable net result of such forfeiture, and its impact as a deterrent, its impact in immobilizing a criminal activity and the like.

Forfeiture is used not only to strip profits from criminals, but also to deprive them of the instrumentalities of their criminal activities. In a given case, at least hypothetically, a forfeiture could result in a net loss to the United States but still should be pursued if the forfeiture served to abate illegal activity.

Finally, I would like to at least briefly address a point that the Committee has expressed interest in, and that is the question of scorekeeping. Here, discussions among some members of Congress and the administration have focused on the possibility of moving the fund off budget. As you know, Mr. Chairman, at the present time, obligations against the fund are entirely offset by proceeds from forfeitures. Since the inception of the fund in 1985, income has exceeded obligations every year. However, since obligations are required to be considered independently from income under current scorekeeping rules, the Department is, in effect, being penalized for its success in vigorously pursuing forfeiture.

That, I gather, is a consequence of the fact that we do not net out, as Customs does pursuant to its procedure. Everything goes into our fund, but as I appreciate it—and I do not profess to be a budgetary expert by any means. But as I appreciate it, for scorekeeping purposes we are being charged with the entire amount of proposed asset appraised value without regard to what liabilities, what liens, what third-party interests may exist.

Senator CHILES. You are saying that they are now showing, the entire value is showing as if that money had been appropriated to Justice?

Mr. RICHARD. That is my appreciation of the scorekeeping.

Senator CHILES. And so that goes against whatever your allocation is?

Mr. RICHARD. That is my understanding, sir.

Senator CHILES. And nothing is shown on the other side.

Mr. RICHARD. We are never given credit for the liabilities or the liens, if you will, that we must attend to when the property is ultimately forfeited.

Senator CHILES. I want to look into that because I think you have a legitimate right to be concerned, if that is the way the scoring is done. And I think that does sort of work against Justice. And the more you can seize, the more, you know, you could be creating some problems for yourself knowing that there have got to be some liabilities out there.

Mr. RICHARD. That concludes my statement, Mr. Chairman, and I will be glad to answer any questions you may have. Thank you.

Senator CHILES. Thank you, sir. I listed, Mr. Richard, in general terms some of the recommendations that GAO had proposed and some that I am thinking about proposing.

I would like to know whether you think Justice could support an authorization for payment of certified and capable attorneys and real property experts who could help the Marshals Service in properly and promptly selling the real property that they are holding?

Mr. RICHARD. Mr. Chairman, I must profess some confusion on this issue. It is my appreciation that we are doing that now pursuant to guidelines recently promulgated.

Senator CHILES. You are not sure whether you need any additional authority?

Mr. RICHARD. Yes. And it may very well be that while we consider that current legislation gives us the authority to do so, notwithstanding that interpretation of existing law, it may nevertheless still be of value to ensure through specific legislation that there is no doubt of our ability to do what we are about to do in any event.

I would like to consult just to re-examine this issue.

Senator CHILES. Fine. I want to give you copies of our proposal, and I would like to have your advice.

Mr. RICHARD. Thank you.

Senator CHILES. Next would be the requirement for an annual audit of the forfeiture fund.

Mr. RICHARD. Certainly, the only question I have—and it is not a concern, it is a question—is the nature of the audit and to what extent it becomes a burden, if you will, on the process. Annual audits, depending on the extent of the audit and the depth of the audit, could very well be somewhat burdensome on the operation. Certainly, oversight of the operation is appropriate, and I do not think you are going to have any problem on that. It is really a question of ensuring that the process of the audit does not, in effect, burden the system unduly.

Senator CHILES. You have contracted out for the maintenance and sale of seized aircraft. That is because the Department recognizes that aircraft are a lot more complex than the sale of cars, for instance.

Wouldn't you compare your aircraft situation, then, with the real property in certain circumstances?

Mr. RICHARD. Well, certainly, I think the theme of what we are trying to say is that the system should retain maximum flexibility so that the Marshals Service can respond either nationally, regionally, locally for dealing with specific problems. We may have unusual expertise in a given area. U.S. attorney's offices may be particularly well equipped to handle complex real estate issues in one area where they are not in others.

The flexibility to respond to local conditions I think gives us a benefit, if you will, and I think this is the theme we are trying to strike.

Now, we will, of course, use contract services, as I have indicated, where it is appropriate. I trust that is responsive.

Senator CHILES. Well, primarily, I think it is just we know cars are something that everybody knows more about. You can use four or five ways in which you are dealing with them: the Marshals Service themselves, getting GSA to deal with them. People kind of understand values. Then some are contracts that you have set up with towing services.

On the other hand, with airplanes it seems that you have decided that is not something—you know, we have got a couple of areas in Pennsylvania or Texas, and you are going to have them handle the aircraft.

Given what I have seen in some seized aircraft that used to be on some of the fields in Florida and watch them just rot.

Mr. RICHARD. Scandalous.

Senator CHILES. You said the word "scandalous." You are right. It was scandalous. And I watched planes from jets to King Airs to Merlins—tremendous airplanes that were worth a lot of money just sit and go to pieces. They were not maintained; no one even cranked them up. Before long, well, everything went to pot. You said scandalous.

We are doing something about that.

Mr. RICHARD. Yes.

Senator CHILES. It just seems to me that real estate is certainly complex. It is not something that generally most of us deal with all the time, and we ought to be trying to make arrangements to deal with it from a professional manner when it is seized.

Mr. RICHARD. We do a lot of land condemnation work in certain areas, in certain U.S. attorney's offices. So there is——

Senator CHILES. If you have got the expertise in the U.S. attorney's office, I think that is fine. I know, for example, in the Southern District, even if the expertise is there, those poor devils are spending all of their time on criminal cases—they cannot get their head up from the criminal cases. And I know for them to have to take the time to go try to do an abstract search, a title search or lien search would just be the worst use of their time.

Now, if we can get you and the Justice Department to give them a few more U.S. attorneys—we in Congress are trying desperately to get that done—that would be better.

I want to congratulate the Marshals Service on the sale of the 1963 GTO-250 for $1.6 million. You got it for free. I do not guess there was too much maintenance, and you certainly got a sizable profit. I do not know who bought it, but that is a good one. I certainly want to congratulate people on that. That is one that someone did not allow to deteriorate. Obviously, it had to have been in some kind of mint condition.

Mr. RICHARD. I am surprised one of the investigative agencies did not somehow argue that they needed it for carrying out their mission.

Senator CHILES. That is right. [Laughter.]

I am sure that some of your undercover agents could have said: I could look pretty good, look like the real thing if you let me have this.

The departmental directive on seized cash which went out in March of 1987 included the FBI, DEA and INS. Those agencies are directly under the Justice Department. I assume, then, that Customs Service's participation is voluntary. Do we need a presidential directive or an executive order to require that Customs participate, not just now but maybe later when the spotlight is off the issue?

Mr. RICHARD. I suspect not. We have, of course, U.S. attorney involvement in a portion of those cases where Customs is seizing it in connection with criminal matters, criminal investigations, so that the U.S. attorney is still going to be playing a role whether the moneys were seized by DEA, FBI, Customs or any other agency. So we have that check, if you will. But I think that the Customs Service, like the Department of Justice, agrees with the observation that we should not be holding on to this cash. I think we have been moving to correct the problem, and as I have indicated, there are, I would submit, pretty simple technique for verifying that we are not slipping back into a problem mode.

I would not suggest that there is at this point any indication of a need for action in this area.

Senator CHILES. In the hearings last September, we discussed the property in Leesburg, Virginia, known as the Shelbourne Glebe Estates. Mr. Fratter of the Marshals Service testified that they are moving to dispose of that property at a minimum bid of $2 million. Can you tell me what the current status of that property is; how

long it has been in inventory; and what are the lien amounts on it? Or has it been sold?

Mr. RICHARD. I do not have that information with me, Mr. Chairman, but I would be glad to find out and submit it.

Senator CHILES. Is anybody here from the Marshals Service?

Mr. RICHARD. I understand that it is anticipated that the sale will be accomplished in September of this year. They are in the process of conducting various surveys prerequisite to partition of some of the property. But it is anticipated, I am advised, that a sale will take place in September.

Senator CHILES. It was last September when we held our hearing, and we were told it was about to be sold then.

The interested innocent third parties is another factor that should be considered. I know you recognize that. You have a situation where there are two properties in Tampa where the U.S. attorney has not established a third-party hearing and does not intend to, while the Marshals Service is waiting for the third-party hearing by the U.S. attorney before they advertise the property. This is 4 years after the property was criminally forfeited.

Now, how do we clear up this kind of problem? We have got a Catch-22 here, you know.

Mr. RICHARD. I am really not in a position at this time to respond because I am not familiar with what factors may justify or have justified the delay.

Senator CHILES. GAO recommends that in the pre-planning aspect of a property seizure that more consideration be given to the defendant's equity. GAO quoted an assistant U.S. attorney in Miami that the equity should be at least $50,000 unless law enforcement purposes are justified.

As you said, depriving the criminal of his property is a very important reason here. Do you have any reaction to that? We are now dealing with the 1986 memo, I think, which is around $10,000.

Mr. RICHARD. We have opportunity and flexibility, if you will, for United States attorneys to modify upward those suggested guidelines, if you will, to respond to local conditions. Certainly, a district like the Southern District of Florida may very well wish to go upward just out of consideration to its current docket and availability of resources and what have you. Keeping in mind that that should not be driving the system, if you will, but really should be a factor that has to be considered.

I think we have to understand its proper relationship to the law enforcement objective here.

Senator CHILES. In hearings the Subcommittee held last March, GAO testified that DEA had a backlog of 9,500 cases. Their backlog is now less than 3,000. Do you have a projection for the elimination of the backlog?

Mr. RICHARD. The Attorney General and the Associate Attorney General have issued directives to reduce the backlog as much as possible, and have established timetables for that. We are examining at this time the nature of the backlog; to what extent, for example, it is a function of the adoption policies employed. As you know, a good portion of the backlog is attribution to the adoptions. And we are examining——

Senator CHILES. Mr. Richard, we have a vote in progress, and I am going to have to leave. I want to thank you for your testimony. We may have a few questions that we will submit to you for the record.

Mr. RICHARD. Thank you, Mr. Chairman.

Senator CHILES. We will recess now until I return.

[Recess.]

Senator CHILES. Now we will hear from Mr. William F. Riley, the Comptroller of the U.S. Customs Service.

Mr. Riley, we welcome you here, and Ms. Robb and Mr. Hamilton.

TESTIMONY OF WILLIAM F. RILEY, COMPTROLLER, U.S. CUSTOMS SERVICE, ACCOMPANIED BY ROBERT HAMILTON, CHIEF, REVENUE BRANCH, U.S. CUSTOMS NATIONAL FINANCE CENTER, AND KAREN ROBB, DIRECTOR, OFFICE OF LOGISTICS MANAGEMENT

Mr. RILEY. Thank you, Mr. Chairman. If there are no objections, Mr. Chairman, I would like my statement included in the record.[1]

Senator CHILES. All right, sir. Your statement will be included in the record.

Mr. RILEY. Senator, I appeared before this Committee in September of 1987, and I am very pleased to report that Customs has made considerable progress in areas of concern to this Committee. The inventory of seized property in Miami remains at manageable levels, and despite a tremendous increase in seizure activity during the past several months, inventories of seized property nationwide remain under control. We are taking more timely forfeiture and disposition actions.

Customs has made very significant progress in accounting for and tracking the status of seized currency and monitoring instruments. As of June 10th, we had $118 million in open monetary instrument cases. Of that $118 million, $84 million is in Government receipt accounts; $19 million remains in vaults as evidence; $13 million is in interest-bearing accounts based on agreements with the courts or violators; and the remaining $2 million represents partial settlements.

The Office of Enforcement has been working with the Department of Justice and U.S. attorneys to assure compliance with Justice and Customs directives on the timely determination of evidentiary status. The majority of the seizures remaining as evidentiary are from a very few locations in which we are now concentrating our efforts.

The forfeiture fund, as currently constructed by statute, requires cumbersome accounting and reporting. GAO has recommended that we propose legislation to correct that, and we are working with GAO in support of efforts to introduce legislation to accomplish that.

This year, in fiscal year 1988, we have received requests for State and local sharing of nearly $33 million; $3 million worth of assets have actually been transferred to date.

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[1] See p. 63.

Senator, I would like to commend GAO for their work on issues of concern to you and for your continued interest in that seized property area. The GAO team has been extremely helpful in pointing out areas in which Customs could improve its management of the seized property program and assisting us in our program modifications. We appreciate your work; we appreciate their work and their contributions.

My colleagues would be happy to answer any questions you may have.

Senator CHILES. Thank you, Mr. Riley, for your statement.

Do you have any estimate of what kind of interest that you have made off of these seized cash that you have now put into interest-bearing accounts?

Mr. RILEY. No, sir. We have not calculated the interest the way Justice had done or GAO had done, but we can certainly do that get it to you.

Senator CHILES. I would appreciate it if you would calculate that and give us the figure for that.[1]

I am also very pleased to hear in your statement that you concur with GAO's recommendation that we change the legislation so that you will not have to do this netting that you now feel that you are required to do under some old existing law or practices.

Mr. RILEY. Yes, sir.

Senator CHILES. And that you support legislation that would change that.

Mr. RILEY. We do.

Senator CHILES. Can you tell me what the position of Customs would be on the requirement of an annual audit of the forfeiture fund?

Mr. RILEY. We would support that.

Senator CHILES. All right, sir. I thank you for that.

Are you able to tell us how much cash has been deposited in the fund during the past year as opposed to what was deposited in the 12 months prior to our first hearing on this issue in March of 1987?

Mr. HAMILTON. Sir, we do not have those specific figures available at this point in time, but we can tell you it is a significant improvement. We currently have $84 million on deposit now. I can compare those figures to prior periods, but at this point in time we currently have only $19 million in the evidentiary category. That has been significantly reduced.

Senator CHILES. So that is a significant change from where you were before in the interest-bearing account.

Mr. HAMILTON. Yes, sir.

Senator CHILES. You have testified that you have $19 million in the vaults as evidentiary funds. My understanding is that Justice personnel listed approval for only some $5 million. How do you explain the difference between the other $14 million?

Mr. RILEY. Senator, we have had a very extensive effort with the Office of Enforcement. We provided listings by seizure number, by location of every currency seizure. We have required the agents to go out and verify the status with every U.S. attorney.

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[1] See p. 69.

There are only two or three locations that account for the $19 million. For example, SAC, the Special Agent in Charge, at Kennedy Airport is currently showing every seizure as evidentiary because they have not been able to work it out with the U.S. attorney there. As soon as they are able to resolve that, then certainly the majority of the $19 million is going to be deposited.

Senator CHILES. Well, now, is somebody working to see that this is resolved? In other words, you are telling me now between Customs and the U.S. attorney in New York?

Mr. RILEY. That is correct.

Senator CHILES. My concern is how high that is on somebody's list of priorities as to whether that gets solved. Has anybody been to Justice and said there is a problem between Customs and the U.S. attorney in New York, can you give us some help?

Mr. RILEY. Yes, sir. I have personally not done that. Mr. Rosenblatt, who is the Assistant Commissioner for Enforcement, has done that. He meets regularly with his staff in the seized property, and they are working very diligently on it.

Senator CHILES. Well, I understand. I know there is a tremendous case load in New York. But I would hope that maybe Mr. Richard or somebody in Justice could help us get that worked out. That is $19 million that, again, we could be drawing the interest off of if we could get that resolved.

Mr. RILEY. That is correct.

Senator CHILES. Well, I would appreciate it if, again, for the record, you could let me know what the result of Mr. Rosenblatt's work is in that regard.

Mr. RILEY. We will do that.[1]

Senator CHILES. According to your testimony, Customs has shared approximately $12 million with State and local law enforcement people, but Customs has $33 million in requests from them. That means that State and local law enforcement officials are still waiting for Customs to transfer some $21 million.

What is the average wait time, and what is Customs' process for evaluating these requests?

Mr. RILEY. I do not know what the average waiting time is. We believe that we have made significant progress in speeding that up. The majority of the $33 million requests were ones that were just recently identified to us—in fact, within the past 10 days. I can get that for you.

Senator CHILES. I wish you would let me know for the record what is the wait time. Again, I hope you will appreciate that as desperate as Customs is, perhaps, for money, these State and local law enforcement officials are 10 times more desperate. And any asset money that they could get, any forfeiture money that they can get, of course they immediately put it into fighting crime on the streets and everything else they are doing.

Mr. RILEY. Well, the State and local sharing is certainly a very high priority of the Commissioner, and we have done everything we can to simplify and smooth that process.

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[1] See p. 68.

Senator CHILES. Well, I think we have all found that there is tremendous improvements in the cooperation between State and local governments and the Federal authorities now that they are able to get some of the fruits of their work.

Mr. RILEY. Yes, sir. I believe you will find that in some locations, particularly South Florida, we are getting the asset share out there very quickly.

Senator CHILES. Good. I know how desperately they need that money, and I know how frustrated they get when the money is not forthcoming. They have made the case; you know, they have helped, the assets have been seized; and then they are saying: We cannot get our hands on it. I hear that from them all the time.

In September of 1987 when you testified before the Subcommittee, you said, "A suspense account has been established so that all deposits of non-evidentiary seized cash and monetary instruments can be immediately identified, controlled and deposited. Specific deadlines have been established for the processing and transfer of cash and monetary instrument seizures."

Yet we heard from GAO today that Customs could not identify all of its cash in the field. In fact, GAO has testified that Customs is holding $38 million unnecessarily.

Can you tell me why we have those kind of findings?

Mr. RILEY. It was the effort working with Enforcement and the U.S. attorneys that identified the $38 million which could be deposited in the Treasury accounts. I believe we had 57; we transferred 38, and 19 remain.

Senator CHILES. So you do not have 38; you would have 19 now?

Mr. RILEY. Nineteen, correct.

Senator CHILES. The 38 has been transferred.

Mr. RILEY. Yes.

Senator CHILES. All right, sir.

As I understand it, Mr. Riley, most of what Customs has actual control over is the seized currency. The Marshals Service takes care of your real property seizures; is that correct?

Mr. RILEY. No, sir. We use Northrop, our contractor, to handle our property seizures. We only have 15 pieces of real property.

Senator CHILES. And you are using a contractor on that. How is that working?

Mr. RILEY. It is working very well. The contractor is involved in pre-seizure planning and is working all through the process. It is working very well.

Senator CHILES. So the contractor is even working in the pre-seizure process?

Mr. RILEY. That is correct. We were able to turn over a marina in less than a year.

Senator CHILES. And you did not feel that you needed any legislation in order to accomplish that?

Mr. RILEY. No, sir.

Senator CHILES. I would like a breakdown of the real property and how that has worked, if you will, if you will give me that.

Mr. RILEY. You want a list of the properties?

Senator CHILES. Yes, sir. And also of your cash conveyances and other property, but also how the real property is working.

Mr. RILEY. We can do that.

Senator CHILES. If you will also tell me which of the assets are shared with State and local governments in that breakdown, we will happy to get that furnished for the record.

Mr. RILEY. I can tell you that.[1]

Senator CHILES. Now, I understand from your testimony you are telling me now if I went down on the Miami River, I am not going to find a river full of boats that are rotten and deteriorating ships. They are being processed properly?

Mr. RILEY. Yes, sir, and they are being maintained.

Senator CHILES. And the river can be used for something besides the storing of derelicts.

Mr. RILEY. It no longer looks like an Oriental bazaar.

Senator CHILES. Now, let me ask you this: If the river is that way, is there another river or harbor somewhere where all of them are being tucked?

Mr. RILEY. No, sir. Miami is the largest place for seizure of vessels. There is no place else in the United States that has an inventory of seizures like that.

Senator CHILES. There is not a hidden harbor somewhere that is going to be full of ships?

Mr. RILEY. If there is, it is very well hidden.

Senator CHILES. Well, I hope for all our sakes that it is well hidden, Mr. Riley.

We thank you for your testimony today.

Mr. RILEY. Thank you.

Senator CHILES. And despite the fact that I still have some outstanding problems, I think we have come a long way from March of 1987 when we held our first hearing on the issue. The overwhelming amount of money is being deposited in our seized accounts. That means that State and local governments are getting their shares quicker, and that allows them to do a better law enforcement job. The sharing of seized property has certainly helped to promote cooperation instead of competition between the State and local and Federal agencies. And along the way, we have generated some economic benefit for the Government.

As I said in my opening statement, we have crafted some provisions which should help in the real property area. The Marshals Service needs experts in helping them properly dispose of the seized properties in their inventory. Again, I want to publicly thank Customs, and I want to thank the General Accounting Office personnel and Justice who have worked hard on this issue. Each time GAO did go into the field, they certainly made the problems better.

The seizure and forfeiture program is a good idea. We want to make sure that the management system of these assets is equally good. I believe we are on the road to doing that. The record will be open for 2 weeks to accept any additional material.

We will recess our hearing subject to the call of the Chair.

[Whereupon, at 11:10 a.m., the Subcommittee was adjourned.]

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[1] See p. 70.

APPENDIX

United States General Accounting Office

GAO Testimony

For Release
on Delivery
Expected at
9:30 a.m. EST
Thursday
June 23, 1988

Asset Forfeiture Programs: Progress and Problems

Statement of
Gene L. Dodaro, Associate Director
General Government Division

Before the
Subcommittee on Federal Spending,
Budget and Accounting, U.S. Senate

GAO/T-GGD-88-41

DEPARTMENT OF JUSTICE AND
U.S. CUSTOMS SERVICE FORFEITURE PROGRAMS

Summary of Statement by
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GAO's reviews of forfeiture programs during the past 3 years, done at the Subcommittee's request, have identified numerous problems, many of which have been addressed. For example

--Customs and Justice cash seizures of $5,000 or more now require Justice headquarters' approval to be held as evidence and $232 million has been deposited into the appropriate Treasury accounts since GAO's 1986-1987 review.

--Customs removed the deteriorating vessels stored on the Miami River and is now disposing of seized vessels more quickly.

--Customs and Justice strengthened controls over agency use of forfeited property because previous procedures provided little assurance that such property was not used inappropriately.

--Surplus funds accumulating in Justice's Forfeiture Fund during fiscal year 1988 have been congressionally authorized to be used for prison construction. The President has asked the Congress to approve an $88.6 million transfer.

However, additional action is needed to correct certain problems.

--Despite the establishment of new Customs and Justice policies to minimize the holding of cash as evidence, Customs and Justice, in June 1988, were holding $75 million as evidence of which only $5 million had been approved by Justice headquarters. Because agency monitoring is needed to minimize the unnecessary holding of cash as evidence, GAO recommends that Customs and Justice include in their annual Forfeiture Fund reports the amount of cash held as evidence at year-end.

--Justice has not implemented GAO's prior real property recommendations calling for revising its economic criteria for seizing real property, and identifying projected net return for its inventory. It is, however, developing legislation, which GAO supports, allowing the Attorney General to warrant clear title to forfeited properties, that is, Justice would guarantee reimbursement to title insurers for any title defects arising from its processing of the forfeiture.

--Customs needs to submit, and Congress needs to enact, legislative changes Customs is developing to bring its Forfeiture Fund accounting into conformance with U.S. Comptroller General standards as required by the Federal Managers' Financial Integrity Act.

Chairman and Members of the Subcommittee:

We are pleased to be here today taking part in the Subcommittee's hearing on Asset Forfeiture Programs operated by the Department of Justice and U.S. Customs Service. As you are well aware, forfeiture law is an important part of law enforcement strategies in combating drug traffickers and organized crime figures because it allows the government to take property such as cash, cars, boats, planes, and real property that has been illegally used or acquired without compensating the owner. This is particularly true since the Comprehensive Crime Control Act of 1984 expanded the federal government's seizure authority and established Asset Forfeiture Funds to finance the management and disposal of seized and forfeited assets. As a result, the value of Justice's and Customs' seized asset inventories has grown tremendously, from $33 million in 1979 to $885.2 million in April 1988.[1]

While the main purpose of the forfeiture programs is to destroy the economic power of criminals and their enterprises, the increasing value of assets being seized heightens the importance of effectively managing and disposing of the assets through sound policies, good internal controls, and adequate staff. Effective program management maximizes the economic return to the government, improves the timeliness of asset proceeds shared with state and local law enforcement agencies, and helps protect the interests of innocent parties in the properties being forfeited.

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[1]Other key financial data on asset forfeiture activities are contained in appendix I.

AGENCIES HAVE CORRECTED MANY OF
THE PREVIOUSLY IDENTIFIED PROBLEMS

Because of the Chairman's continuing interest in forfeiture programs, as demonstrated by this and earlier hearings, both Justice and Customs have made substantial administrative improvements to their programs during the past 3 years. During this period, GAO has, at the Chairman's request, reviewed various aspects of the agencies' forfeiture programs including management of seized cash and real property, forfeited property retained by the agencies for official use, and forfeiture fund accounting and reporting.[2] Our work identified numerous problems, for example:

--The Drug Enforcement Administration and Customs Service were holding millions of dollars in agency vaults for long periods of time when the money could have been deposited into U.S. Treasury accounts. For example, as a result of our 1986-1987 review in Miami and Los Angeles, the agencies identified $50 million which was being held unnecessarily as evidence in agency vaults. Depositing delays occurred for a number of reasons including the lack of established seized cash policies and case processing backlogs.

--Justice was holding real properties, often in excess of a year, even though there was little likelihood an economic return[3] would be realized from their sale. For example, 26

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[2]Appendix II lists prior GAO work in the forfeiture area.

[3]The "profit" made on a property after its expenses have been deducted from its sales proceeds. Undetermined indirect costs incurred by the government such as personnel costs of U.S. Attorneys, U.S. Marshals, and other agency personnel were not included in our computation of net economic return.

properties of 47 disposals that we reviewed realized no net return to the government. Also, properties offered for sale were often withdrawn or, if sold, the sales were significantly delayed before going to settlement. For example, only 2 of 33 properties we reviewed in 1987 for which sales offers were accepted went to settlement within the 60 days specified in the sales contract. The delays occurred because Justice had not complied with all forfeiture requirements or buyers could not obtain title insurance needed to finance their purchase when Justice could not demonstrate to the satisfaction of title insurers that it had clear title to the properties.

--Customs was incurring increased depreciation and holding costs and creating environmental problems because of unnecessary delays in forfeiting and disposing of seized vessels stored on the Miami River. In 1985, Customs had 145 vessels stored on the river for as long as 8 years, and some of the vessels were deteriorating.

--Surplus money was accumulating in Justice's Forfeiture Fund to be used at Justice's discretion. For example, $68 million remained in Justice's Fund at the end of fiscal year 1987.

--Customs' Forfeiture Fund accounting and reporting did not comply with U.S. Comptroller General standards as required by

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the Federal Managers' Financial Integrity Act.[4] Further, $27.6 million had not been transferred to the Treasury General Fund at the end of fiscal year 1986 as required by law.

--Forfeited personal property in a Drug Enforcement Administration's field office was being used primarily to enhance the appearance of an official's office. Our review of this situation revealed that internal controls were inadequate to ensure that forfeited personal property being kept by agency personnel for official government use was not being used inappropriately.

The agencies have taken action to resolve many of these problems, for example:

--Justice and Customs revised or established policies in March and July 1987, respectively, to require headquarters' approval of cash seizures of $5,000 or more being held as evidence and the Drug Enforcement Administration has reduced a 9,500-case processing backlog, including seized cash cases, to 2,635 as of May 1, 1988. Also, the agencies are depositing cash more timely, and as of the end of May 1988, they had deposited about $232 million in designated U. S. Treasury accounts. This quicker depositing of cash has resulted in measurable savings of about $23 million in reduced Federal borrowing costs. Customs also transferred the $27.6 million plus accumulated

[4]The act requires agency heads to annually evaluate their internal control and accounting systems and report to the President and Congress whether the systems comply with Comptroller General standards.

interest to Treasury's General Fund after we brought to its attention the failure to make the legislatively mandated transfer.

--Justice issued guidelines in April 1988 authorizing the use of private legal assistance in clearing title to real property being forfeited, and, in September 1987, revised procedures to improve documentation of its efforts to notify parties with interests in the properties.

--Customs corrected the seized vessel storage problems it had on the Miami River and is now forfeiting and disposing of seized vessels more quickly. For example, Customs had 34 vessels stored on the river as of April 1, 1988, compared to 145 in 1985. Also, only 19 of the 170 vessels in the Miami District's inventory in April 1988 were seized more than 15 months ago.

--Customs and Justice issued guidelines in April and October 1987, respectively, strengthening controls governing the keeping of forfeited property by agency personnel for official agency use.

--Congress also increased its oversight of Justice's Forfeiture Fund. It enacted changes to the Justice Fund (1) limiting fund disbursements, excluding sharing, to 50 percent of total amounts available for appropriation in fiscal year 1988 and (2) allowing for the transfer of surplus funds at the end of fiscal

year 1988 for the construction of correctional institutions.[5] The President, on March 17, 1988, as part of his proposed transfers and mandatory supplemental appropriations request for fiscal year 1988,[6] asked Congress to approve a $88.6 million transfer from the Fund for prison construction. A Justice official told us the transfer is to take place sometime during fiscal year 1989 at the discretion of the Attorney General.

These actions demonstrate that Customs and Justice are making a good faith effort to correct the problems which have been the subject of several hearings held by this Subcommittee. The agencies overall responsiveness to our recommendations has been good, but certain problems have not yet been resolved. For example,

--Although Customs and Justice established new policies to minimize the unnecessary holding of cash as evidence, Customs was holding $57 million nationwide as evidence in March 1988, of which at least $38 million was being held unnecessarily. The Drug Enforcement Administration (DEA) was holding $53 million as evidence in June 1988. Justice officials were following-up to determine if the money was needed as evidence.

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[5]The Department of Justice Appropriations Act, 1988, Public Law 100-202, December 23, 1987.

[6]House Document 100-176, prepared pursuant to the bipartisan budget agreement, pursuant to 31 U.S.C. 1107.

--Justice had not revised its criteria for determining whether forfeiture of a real property would be economically worthwhile. Also, Justice lacks the information and systems to identify and monitor projected net proceeds for real properties being forfeited.

--As of June 9, 1988, Customs had not brought its Forfeiture Fund accounting and reporting into compliance with Comptroller General Standards. Customs said it is developing the legislative changes necessary to bring its accounting and reporting into such compliance.

Let me discuss each of these areas in more detail.

JUSTICE AND CUSTOMS NEED TO BETTER INSURE THAT SEIZED CASH POLICIES ARE COMPLIED WITH

Following our March 1987 testimony before this Subcommittee, Customs and DEA deposited the cash we identified as being held unnecessarily for evidentiary purposes and established new policies to minimize the unnecessary holding of cash as evidence. Customs' policy provides that the Special Agent-in-Charge, in conjunction with the U.S. Attorney (Department of Justice), will determine, following a cash seizure, whether the cash is needed as evidence. Justice's policy requires U.S. Attorneys to obtain headquarters' approval before holding as evidence any cash seizure of $5,000 or more.

In preparing for a House Subcommittee on Crime hearing in March 1988, we learned that Customs was holding $57 million as evidence. In discussing this situation with Customs' officials, they agreed to follow-up with the field offices to determine whether the cash was needed as evidence and whether additional changes should be made to its procedures to assure that the field offices were complying with the new policy. Customs' efforts, as we will now discuss, led to $38 million of the $57 million being reclassified as nonevidentary.

In mid-March 1988, Customs reclassified as nonevidentiary $32.3 million of the $57 million, making the money available for deposit into U.S. Treasury accounts. At that time Customs was still holding for evidentiary purposes 275 cash seizures valued at $24.7 million. We discussed this with a Justice headquarters' official in March 1988, who informed us that Justice had approved only one Customs cash seizure of $5,000 or more to be held as evidence. Consequently, we informed Customs of this, by letter on April 7, 1988, and questioned the appropriateness of holding the $24.7 million as evidence.

Customs and Justice headquarters' officials subsequently met to discuss this issue. They agreed to send a memo to Customs' field personnel reinforcing the seized cash management policies and establishing a monitoring system in headquarters. On April 20, 1988, the Customs Assistant Commissioner, Office of Enforcement, sent each field office a memo saying the case folder for each cash seizure must contain either a document from the Department

of Justice saying the cash is needed as evidence and is not to be deposited, or a memo from the Special Agent-in-Charge saying the money is not needed as evidence, in which case the cash should be deposited immediately. Copies of all exemption documents from the Department of Justice are to be sent to Customs' headquarters for monitoring purposes.

As of June 8, 1988, we were already beginning to see the results from the April 20, 1988 memo. For example, the balance in Customs' holding account at Treasury had more than doubled since February 10, 1988--from $34 million to $84 million. Also, the amount of seized cash held as evidence had decreased from $57 million to $19 million--a reduction of $38 million. Customs also sent Justice a letter on May 24, 1988, saying its field review of cash being held as evidence revealed that most seizures had been retained at the verbal request of the prosecuting Assistant U.S. Attorney, and none of the cases had received Justice headquarters' approval to be held as evidence. The letter also said it appears that several judicial districts either have not received the Justice policy memo on seized cash or have chosen not to abide by it. Justice headquarters' officials, however, told us they are unaware of any widespread compliance problems with their policy by Assistant U.S. Attorneys, but have requested information on specific instances on non-compliance from Customs.

According to agency officials, the agencies are currently holding $75 million in seized cash as evidence, most of which is held by DEA, as shown in the following table.

Table 1
Cash held as evidence
June 1988

(millions)

Drug Enforcement Administration	$53
Federal Bureau of Investigation	3
Customs	19
Total	$75

A Department of Justice headquarters' official, however, told us his office had approved only about $5 million of that amount to be held as evidence. He explained that some of the $70 million difference is attributable to (1) new seizures for which an evidentiary determination has not yet been made; or (2) seizures not subject to civil or criminal forfeiture, such as bank robbery money which is returned to the bank; or (3) seizures of less than $5,000 which do not require headquarters' approval. Because we obtained the total evidentiary cash totals last week, we did not have time to determine whether Justice's explanation is valid or not. The $70 million being held as evidence without headquarters' approval, however, seems high and we are following up with Justice and Customs to verify that it is correct.

To minimize the unnecessary holding of seized cash as evidence, we believe agency monitoring of cash being held as evidence is needed. To assure that such monitoring is done, we recommend that the Commissioner of Customs and the Attorney General include

in their annual Forfeiture Fund reports the amount of seized cash held as evidence at year-end.

ACTION NEEDED TO IMPROVE ECONOMIC RETURN OF REAL PROPERTY SEIZURES

Justice's policies and procedures make it clear that the primary objectives of real property forfeiture are to economically punish criminals and destroy the economic power of criminal enterprises. These policies and procedures also recognize that consistent with these primary law enforcement objectives, the real property forfeiture program must employ sound business practices to maximize the economic return to the government and to protect the valid interests of innocent third parties. In this regard, Justice's agencies -- the Federal Bureau of Investigation (FBI), DEA, U.S. Marshals Service, and U.S. Attorneys Office -- have all established criteria for determining whether it is economically worthwhile to seize real property and the U.S. Attorneys Office has established procedures to comply with legal requirements for resolving interests that parties, other than the defendant, such as mortgagees, may have in the properties being forfeited. As we testified previously, Justice's economic criteria is inadequate and third party interests in Justice's properties often were not being timely resolved.

Economic criteria needs to be revised

Our 1987 review revealed that the agencies' economic criteria need to be revised because, in addition to the lack of consistency among the agencies, the criteria is too low and/or

does not recognize the defendant's equity in the property. Because the defendant's equity is the only interest in the property that is forfeitable to the government, it is the most important economic consideration in determining the government's decision to pursue forfeiture.

For example, the DEA and U.S. Attorneys office criteria do not refer to the defendant's equity. The DEA criteria specifies that property of $10,000 or less should not be seized. The U.S. Attorney's manual states that it may be ill-advised or wasteful to seize and forfeit real property of low monetary value but low monetary value is not defined or otherwise explained.

The U.S. Marshals Service and FBI criteria is too low. The Marshals Service manual states that guidance should be requested before assets with excessive liens are seized which they describe as liens approaching, equaling, or exceeding the property's appraised valued. The FBI criteria specifies that real property with an appraised value less liens of $10,000 or less (e.g., defendant's equity) should not be seized. These criteria do not adequately consider the costs that accrue during the lengthy periods often required to forfeit and sell real properties. For example, an Assistant U.S. Attorney in the Miami office told us that, generally, it is not economically worthwhile to forfeit a property unless it has an equity of at least $50,000. Attorneys in Justice's Asset Forfeiture Office and the General Counsel of

the American Land Title Association[7] told us that property with less than 20 percent equity should be thoroughly reviewed to justify seizure because of the property's marginal equity. Thus, such properties should not normally be seized unless justified on other than an economic basis (e.g., for law enforcement purposes).

In testimony before this Subcommittee in September 1987, we said that Justice was seizing and holding many real properties for long periods even though there was little likelihood an economic return would be realized. For example, 26 of the 47 real property disposals that we reviewed did not realize an economic return to the government. We believe the Justice agencies' inadequate economic criteria is a contributing cause to those results. For example, of the 26 disposals that did not realize an economic return, 21 were returned to lienholders or defendants because the defendant's equity was insufficient to justify selling the properties. Twenty of these properties, however, remained in Justice's inventory an average of 12 months after seizure before they were returned -- from a low of 17 days to a high of 31 months.[8]

Third party interests need to be resolved timely

Also, Justice needs to assure that third party interests in the

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[7]A Washington, D.C. based group that represents U.S. title companies.

[8]Information was lacking to enable us to determine how long one property was held.

properties being forfeited are being resolved in a timely manner. Our 1987 review revealed that real properties offered for sale by Justice often were withdrawn or, if sold, the sales were significantly delayed before going to settlement because of title problems. For example, 12 of 46 Florida properties considered for sale in November 1986 and January 1987 were withdrawn before the sale and only 2 of the 33 properties for which sales offers were accepted went to settlement within the 60 days specified in the sales contract. Twenty-one of the remaining 31 properties were in the inventory as of August 28, 1987, and 9 were still in the inventory as of April 27, 1988,

Justice's failure to resolve third party interests as required is a contributing cause to these delays. For example, at least 5 of the 12 properties[9] withdrawn from the November 1986 and January 1987 sales were withdrawn because court hearings to resolve third party interests in the forfeited properties had not been held. Officials did not take action to resolve those interests until the properties were being readied for sale, months later than they could have been. For example, the hearing for three Florida condominiums was scheduled for September 1987, about 39 months later than it could have been.

In preparing for a congressional hearing to be held in Florida in March 1988, we followed-up on two of the properties included in our 1987 testimony which were located in the Tampa district.

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[9]Because of incomplete records we were unable to identify why all of the properties were withdrawn.

Each property was valued at $1 million or more. We learned that one of the properties had gone to settlement and that third party interests had not been resolved on the other. On April 29, 1988, in preparing for this hearing, we again followed-up on that property and learned that the property's status remained unchanged according to the U.S. Attorneys office for the following reasons: (1) there was some question as to whether the third party hearing was necessary since the property was forfeited before the 1984 legislation requiring such hearings, (2) the U.S. Marshals Service had not advertised the property for sale, and (3) the U. S. Attorneys office had not been provided a detailed report from a title company identifying the existence or non-existence of liens against the property. However, Marshals Service officials told us they were waiting for the U.S. Attorneys office to complete the third party hearing process before advertising the property for sale.

Subsequently, in mid-May 1988, the Marshals Service provided the U.S. Attorneys office with a more detailed title search and report. According to the U.S. Attorneys office, they will now proceed with the third party hearing process which is expected to take about 2 months.

Analysis of the U.S. Attorneys office response regarding this property illustrates several of the managerial deficiencies we have discussed in our previous testimony. For example, (1) the property is still in Justice's inventory 4 years after it had been criminally forfeited, and (2) an adequate title search,

needed to assure that all third party interests and other matters have been satisfactorily resolved, had not been completed, even at this late date.

Furthermore, Justice's reasoning that the hearing may not be necessary because the property's forfeiture predated the 1984 legislation ignores the fact that, as we testified previously, purchasers of Justice's forfeited properties have often been unable to obtain title insurance, and consequently, the financing needed to buy the property unless third party interests have been adequately resolved.

One of the reasons for the settlement delays is Justice's inability to effectively demonstrate to title insurers that it has clear title to the properties being sold. The title insurance industry has been reluctant to insure title to forfeited properties because Justice has been unwilling to guarantee reimbursement for any title defects arising from its processing of the forfeiture. Justice, however, is developing proposed legislation to address this issue. Supporting documentation states it is becoming increasingly difficult for purchasers of forfeited properties to obtain title insurance, and because title insurance is a prerequisite in many cases to obtaining a mortgage, the Attorney General's ability to sell the property for its fair market value is being adversely affected. The legislation now being developed would allow the Attorney General to warrant clear title to forfeited properties, that is, Justice would guarantee reimbursement to title insurers for any

title defects arising from its processing of the forfeiture.

We also testified that Justice could not accurately project the inventory's potential economic return to the government (net proceeds) because it could not readily identify the defendant's equity in its real properties -- i.e., value of the property less outstanding liens and mortgages. Such information is essential to making informed and effective decisions in managing the real property inventory. We therefore recommended that, consistent with Justice's law enforcement objectives, the Attorney General

--revise agency criteria for determining whether it is economically worthwhile to seize real property to recognize the defendant's equity and costs anticipated to be incurred during forfeiture of the property; and

--improve the adequacy and accuracy of real property information, including the reporting of defendant equity represented in the real property inventory.

The Attorney General, however, responded that existing criteria is sufficient for determining whether it is economically worthwhile to seize real property. He stated current guidelines provide that the economics of a seizure will be carefully considered in "pre-seizure" planning. He believes Justice needs the flexibility afforded by its current guidelines.

We, however, continue to believe our recommendations should be implemented. Justice's criteria for determining whether it would

be economically worthwhile does not adequately recognize the most important consideration in determining the projected net proceeds to the government, that is, the defendant's equity in the property--the only property interest forfeitable to the government.

Reporting of defendant's equity is needed

Justice does not know how much of its real property inventory is encumbered by valid liens and mortgages, and such information is needed to determine the defendant's equity in the property. As of March 31, 1988, the Marshals Service reported a real property inventory of 1,472 properties valued at $252.6 million. However, the value of the property as carried on Marshals Service inventory records has little or no relationship to the net proceeds the government is likely to realize upon disposition of the property because it does not recognize outstanding liens/mortgages of innocent third parties. For example, a motel in Daytona Beach, Florida, was initially valued on Marshals Service inventory records at $1,040,000. However, the government incurred a loss of about $43,000 and a valid lien of $108,000 was not paid because sales proceeds were insufficient to pay all existing valid liens and government costs associated with holding and disposing of the property.

In September 1987, the Marshals Service awarded a contract for the design and implementation of a new information system that is intended to improve the adequacy and accuracy of its real

property information. However, a Marshals Service official told us that the system is not expected to be fully operational before fiscal year 1990. According to the Marshals Service, the new system will maintain defendant equity data and estimate net proceeds/loss on all real properties.

Estimated net proceeds information is critically important to the proper management of Justice's inventory of real properties. Because it will be some time before Justice's new system will be able to provide such information, we recommend that, in the interim, the Attorney General include in his annual Forfeiture Fund report to Congress, defendant equity and projected net proceeds data on the high-value real properties in the inventory valued at $1 million or more at year-end. As of June 14, 1988, there were 29 such properties. Such reporting should continue until the new automated system is fully operational and routinely accumulating and reporting such data for all real properties.

CUSTOMS' FORFEITURE FUND ACCOUNTING AND REPORTING NEEDS IMPROVEMENT

In September 1987, we testified before this Subcommittee that Customs' Forfeiture Fund accounting and reporting did not comply with the Comptroller General accounting principles, standards, and related requirements as required by the Federal Managers' Financial Integrity Act. Because of congressionally-imposed spending limitations, Customs was not recording all receipts and expenses into its Fund, but rather was using an administratively cumbersome accounting procedure of offsetting an asset's expenses

against its sales proceeds, known as "netting", before recording and depositing the balance into the Fund. Also, its fiscal year 1985 and 1986 Forfeiture Fund reports were incomplete. We made several recommendations, including that the Secretary of the Treasury require the Commissioner of Customs to record and report all authorized Fund receipts and expenses consistent with the Comptroller General's standards, and take action necessary to bring Customs' accounting into conformance with the Comptroller General's requirements.

In December 1987, Customs agreed to improve its annual reporting, but stated legislative changes were needed before it could bring its accounting into conformance with the Comptroller General's requirements. We therefore recommended on March 4, 1988, that the Secretary of the Treasury direct the Commissioner of Customs to propose to Congress the statutory amendments necessary to bring Customs' Forfeiture Fund accounting into compliance with Comptroller General accounting and reporting standards as required by the Federal Managers' Financial Integrity Act.

In discussions with Customs' officials in June 1988, we learned they are preparing the legislative proposals necessary to eliminate "netting" and bring their Fund accounting into compliance with Comptroller General standards.

Customs did not issue its fiscal year 1987 Forfeiture Fund report until June 7, 1988, and we were not provided a copy until June 16, 1988. Therefore, we did not have sufficient time to fully

evaluate the report. However, although the report has more information than the previously issued ones, it still does not adequately reflect total program operations because of Customs' "netting" practice.

We would also like to mention that legislation introduced on March 23, 1988--S.2205--addresses, in part, Customs' and Justice's Forfeiture Fund operations. That legislation contains a provision consistent with one of our earlier recommendations, that is, removing the congressionally imposed spending limitations--"cap"--on Customs' Forfeiture Fund. This will allow Customs to bring its Fund accounting into compliance with Comptroller General standards. As you know, we support enactment of that legislative change, along with changes to implement two more of our recommendations, which are (1) require annual financial audits of Customs' and Justice's Forfeiture Funds, and (2) reduce the Customs' Fund carryover from $20 million to perhaps $10 million.

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In closing, we would like to note that you, Mr. Chairman, this Subcommittee, and numerous persons within Justice and Customs, are to be commended for the many program improvements that have been made during the past 3 years.

We would be happy to respond to any questions.

KEY FINANCIAL DATA
ON ASSET FORFEITURE PROGRAM

	Justice (millions)	Customs (millions)
Fiscal year 1987 Fund receipts	$177.6	$49.8[a]
Fiscal year 1987 Fund disbursements	114.4	17.5[a]
Transferred to U.S. Treasury (fiscal years 1986 and 1987)	50.9	52.4
Funds in Treasury holding accounts pending forfeiture[b]	204.3	84.0
Amounts shared with state/local law enforcement agencies[c]	109.5	13.9

[a] Understated because of the "netting" procedure used by Customs (see page 19).

[b] As of May 31, 1988, for Justice and June 8, 1988, for Customs.

[c] As of May 31, 1987, for Justice and April 15, 1988, for Customs.

GAO REPORTS AND TESTIMONIES ON ASSET SEIZURES AND FORFEITURE

1.	Statement of Gene L. Dodaro Before the Subcommittee on Crime, House of Representatives, on Asset Forfeiture Programs: Corrective Actions Underway But Additional Improvements Needed	GAO/T-GGD-88-16 March 4, 1988
2.	Seized Conveyances: Justice and Customs Correction of Previous Conveyance Management Problems	GAO/GGD-88-30 February 3, 1988
3.	Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, on Real Property Seizure and Disposal Program Improvements Needed	GAO/T-GGD-87-28 September 25, 1987
4.	Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, on Asset Forfeiture Funds: Changes Needed to Enhance Congressional Oversight	GAO/T-GGD-87-27 September 25, 1987
5.	Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, $ Millions in Seized Cash Can Be Deposited Faster	GAO/T-GGD-87-7 March 13, 1987
6.	Drug Enforcement Administration's Use of Forfeited Personal Property	GAO/GGD-87-20 December 10, 1986
7.	Statement of Arnold P. Jones Before the Committee on the Budget, United States Senate, On Customs' Management of Seized and Forfeited Cars, Boats, and Planes	Statement April 3, 1986
8.	Improved Management Processes Would Enhance Justice's Operations	GAO/GGD-86-12 March 14, 1986
9.	Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement	GAO/PLRD-83-94 July 15, 1983
10.	Asset Forfeiture - A Seldom Used Tool in Combatting Drug Trafficking	GAO/GGD-81-51 April 10, 1981

Department of Justice

STATEMENT

OF

MARK M RICHARD

DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON FEDERAL SPENDING, BUDGET AND ACCOUNTING
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

CONCERNING

MANAGEMENT OF SEIZED CASH AND DISPOSITION OF SEIZED PROPERTY

ON

JUNE 23, 1988

Mr. Chairman and Members of the Subcommittee --

I appreciate the opportunity to appear this morning to discuss the continuing efforts of the Department of Justice in the area of seized cash management as well as the disposition of seized property.

As you know we have revised our policies and procedures for handling seized cash to ensure that it is deposited as soon as possible into the Seized Asset Deposit Fund, the Treasury account where non-evidentiary seized cash is held pending forfeiture. Since the beginning of Fiscal Year 1987, the net cash balance in the Fund has more than quadrupled. In fact, during that year, the United States Treasury realized approximately $6.4 million in imputed interest from monies in the Fund. Furthermore, as I will describe later, the United States Marshals Service has made substantial improvements in managing and disposing of seized properties in its custody.

Management of Seized Cash

Before passage of the 1984 Comprehensive Crime Control Act, we counted federal forfeitures in the tens of millions of dollars; today, as you know, we count federal forfeitures in the hundreds of millions of dollars. Obviously, this exponential increase did not occur without some difficulty, not the least of which involved seized cash management. In formulating our national policy regarding seized cash management we agreed with the General Accounting Office that much of the currency being held as evidence was not, in fact, strictly necessary for that

purpose, i.e., did not meet the standard of serving a significant, independent, tangible evidentiary purpose. There are other cases, however, where the seized currency must be held for use as evidence and it is imperative that we do not -- in our desire to place seized currency into a deposit account -- inadvertently jeopardize a potentially successful civil forfeiture case or a criminal prosecution and its concomitant forfeiture. The Department's first priority is to obtain convictions of drug traffickers and the like and our cash management responsibilities, although important, must be pursued with regard for the fact that our primary duty is the investigation and prosecution of drug trafficking and related crimes.

In an effort to balance the need for improved controls on the handling of seized cash with the need for retaining cash seizures intact for evidentiary purposes, we developed a new policy. In March 1987, a Departmental Directive from then Associate Attorney General Stephen S. Trott, entitled "Seized Cash," was sent to all United States Attorneys and other components of the Department. The Directive, which became effective May 1, 1987, requires that seized cash be expeditiously forwarded to the United States Marshals Service for deposit in the Seized Asset Deposit Fund. In this way we not only addressed the security problems inherent in holding large amounts of cash in numerous locations but we ensured that the Federal Government could effectively earn interest on the money for as long as possible. Amounts deposited into the Seized Asset Deposit Fund

are counted as cash-on-hand by the Treasury, thereby commensurately decreasing the Government's borrowing needs.

To address the evidentiary concerns of prosecutors, however, the directive sets forth specific criteria for exemptions from the deposit requirement and specifies procedures for reviewing and approving exemption requests. Under the Directive, a Departmental component may be exempt from the transter requirement and thus retain currency for a specific case only when the currency, or a portion thereof, will serve a significant independent, tangible evidentiary purpose due to, inter alia, the presence of fingerprints, packaging in an incriminating fashion, or the existence of a traceable amount of narcotic residue on the bills themselves. By its terms, the Directive requires the express written permission of the Assistant Attorney General of the Criminal Division for any exemption from deposit into the Seized Asset Deposit Fund of amounts of $5,000 and above. If the amount of seizure is less than $5,000, an individual at a supervisory level within the United States Attorney's office may grant an exemption. The same criteria, i.e., that the cash will serve a significant, independent, tangible evidentiary purpose, are, of course, applicable.

In addition to specifying procedures for handling cash seized after March 1987, the Directive set forth a process by which the backlog of cash-on-hand in agency vaults would be reduced. It directed all United States Attorneys and Criminal Division Section Chiefs, as well as the FBI Director, the DEA Administrator, and the INS Commissioner, to review existing cases

and property storage sites and make all required transfers of cash to the Marshals Service for deposit in the Fund. Cash could be retained on-site only when an exemption was granted.

We believe that the initiatives set forth in the Directive have met with considerable success. In the 13 months from May 1, 1987 (when the Directive went into effect) through May 31, 1988, over $273 million was deposited into the Seized Asset Deposit Fund. The average monthly deposits into the Fund have more than doubled from $8.4 million (for the 21 months prior to the effective date of the Directive) to $21 million (for the 13 months ending in May 1988). This unprecedented activity has increased dramatically the net cash balance in the Fund by $116.7 million -- from $87.6 million on May 1, 1987 to $204.3 million on May 31, 1988. Since the beginning of Fiscal Year 1987, the net cash balance has more than quadrupled. As a result of the Department's efforts in seized cash management we estimate that imputed interest savings to the Treasury will reach approximately $13 million in Fiscal Year 1988. Our discussions with U.S. Attorneys' offices have generally resulted in decisions by those offices to allow the seizing agency to turn over seized cash to the Marshals Service for deposit into the Seized Asset Deposit Fund, rather than to seek an exemption. In fact, to date only 13 requests for exemptions totalling $5.95 million have been approved by the Assistant Attorney General of the Criminal Division. As required, each of these requests, averaging $457,700, represented currency that had a significant, independent, tangible evidentiary purpose.

We will continue our efforts to ensure that non-evidentiary seized cash is expeditiously deposited into the Seized Asset Deposit Fund and to address any issues that are ancillary to the goal of improved cash management in general.

Property Management by U.S. Marshals Service

The Subcommittee has expressed a special interest in the disposal of real property. Before discussing issues related to real property, I would like to take an opportunity to review some of the improvements the Department has made in managing all types of property subject to forfeiture.

Four years ago, the Department of Justice was severely criticized for providing inadequate care for seized property, which resulted in the diminution in value of some of that property during forfeiture proceedings. Since the Department consolidated responsibilities for the custody and care of seized property with the Marshals Service, that criticism has largely subsided, as evidenced by this Subcommittee's more narrowly focused attention on specific, difficult problems related to the disposal of forfeited real property.

As GAO pointed out in an earlier study, four years ago the Department could not report how much property was in its custody, or what it was worth. Three years ago, after effectively implementing an automated inventory system, the Marshals Service was able to report an inventory of just over 3,000 properties -- only 300 of which were real properties. As of May 31, 1988, the

Marshals Service was managing over 15,000 properties nationwide -- a five-fold increase -- including more than 1,500 real properties. This is a result not only of tougher forfeiture laws, but also of increasingly confident and aggressive application of the law. Prosecutors now know that seized assets will be effectively protected and managed during forfeiture proceedings. Logistical and financial constraints no longer limit the application of forfeiture laws against drug kingpins and organized crime.

The Marshals Service uses a mix of government and contract personnel to manage seized properties. The resulting property management costs continue to be less than 10 percent of the total income from forfeitures. For example, the Marshals Service recently awarded two contracts for the management and disposal of all aircraft seized by the Department of Justice -- one contractor is located in Texas and the other in Pennsylvania. Through these contracts, approximately 100 aircraft worth $116 million will be cared for. Such consolidation will save administrative costs and precious staff time in dealing with seized aircraft. At the same time, the centralized contracts call for the Marshals Service to make an individual assessment of the condition of each aircraft seized, and a case-by-case decision on whether to move the aircraft to a centralized facility or leave it where it is. This exemplifies how an agency can relinquish unnecessary involvement and yet retain a proper level of discretion and control in decisions affecting the management and disposal of seized property.

On the other hand, the Marshals Service manages virtually all cars seized by the FBI, DEA and INS through a series of individual local towing, storage, and sales contracts. Such a system of contracts is now in place along the Southwestern border of the United States, where more than 90% of all Justice seizures of vehicles are made, mostly by INS. By ensuring proper storage and sales preparation, the average sales price of these traditionally low-value seizures has increased from $300 to $1000 per car over the past two years.

In other locations, the Marshals Service has negotiated arrangements with the General Services Administration (GSA) for the towing, storage, and sale of seized and forfeited conveyances. In lieu of private contract services, the Marshals Service has worked with GSA in Miami, New York, Los Angeles, and San Francisco to manage cars because GSA services are comparable and competitive in quality and price to the private sector.

At the other end of the scale, in a more intensive and specialized marketing and disposal effort, the U.S. Marshal for the District of Connecticut sold a rare 1963 GTO Ferrari 250 for $1.6 million -- the best return yet for a single forfeited car. The Marshals Service consistently tries to use the best available government or private resources and services for specific assets and locations. We believe that tailoring a mix of national and local contracts, and government and private services, according to the individual properties and according to the different types of property, has resulted in large dividends

to the forfeiture program. The flexible approach of using the appropriate mix of government and private resources has proven successful and should continue.

Similar to its approach to managing seized property, the Marshals Service uses a variety of sales resources and techniques for disposal of property after forfeiture. Through contracts with the private sector, professional brokers and auctioneers are retained routinely to sell forfeited property. When it is appropriate, Marshals Service employees arrange for and conduct sales through sealed bids, private sales, and on occasion by auction. When it is appropriate, they use GSA to sell forfeited cars. The Marshals Service has the flexibility to select the right sales strategy for particular assets to generate the best results and does not rely exclusively on one technique or agency to make decisions or carry them out.

This Subcommittee is well aware of the complex and difficult problems that the Justice Department has faced in connection with the disposal of real property. Last September, you were advised of draft guidelines under development to govern the retention of private counsel by the Marshals Service to assist them as necessary in complex and difficult real estate transactions. I am happy to report that the Department has issued these guidelines authorizing the Marshals Service, when the local U.S. Attorney concurs, to retain private counsel in certain situations, especially real estate transactions, when the requisite expertise in corporate, real estate, securities, or

banking law is not readily available within the Department of Justice. This will be especially helpful when dealing with a variety of state and local real estate laws and procedures.

We recognize the need for legislation to clarify the Government's authority to warrant title in the sale of real property forfeited under the civil forfeiture statutes. As you know, Congress clearly established this authority in the RICO and Continuing Criminal Enterprise criminal forfeiture statutes through the Comprehensive Crime Control Act of 1984. However, civil forfeiture statutes -- in particular Title 21 USC 881 -- are silent on the authority of the Attorney General to warrant title to forfeited property. Ensuring that U.S. Marshals have the delegated authority to warrant title to any property forfeited under the laws enforced or administered by the Department of Justice will help purchasers of the property obtain title insurance, thus enhancing the marketability of forfeited real estate and resulting in a greater net return to the United States.

GAO has expressed its concern about the inability of the Department of Justice to identify its potential net equity in forfeitable property and I believe we are adequately addressing that concern. Although the Marshals Service reports that it presently is in custody of approximately $250 million in real property, a portion of that $250 million represents the interests and equity of mortgageholders, lienholders, and other innocent third parties. We recognize that it is useful to know what the remaining potential net equity of the United States is, both in individual cases and in the aggregate.

The Marshals Service is currently upgrading its inventory and management information system, and will be able to report on net equity when the new system is implemented. The Marshals Service anticipates that the new automated Seized Asset Management System will be operating as a prototype in several locations before the end of Calendar Year 1988, and that it will be operating in most Marshals' offices before the end of Fiscal Year 1989.

In the interim, the Marshals Service agrees with GAO that a reasonable effort should be made to aggregate information on the most significant properties. For its annual report to Congress on the Fund, the Marshals Service will prepare figures on the equity of lienholders and other potential third parties and the remaining net equity of the United States for all properties with an appraised value of more than $1 million.

However, while the current recordkeeping systems are unable to report in the aggregate on net equity in real property seizures, it would be incorrect to assume that the issue of the government's potential net equity is considered inconsequential or unimportant by the Department of Justice. I can assure this Subcommittee that we continue to view the area of pre-seizure planning to be absolutely essential to the success of a good forfeiture program, and pre-seizure planning includes an assessment of the government's potential net equity -- or liability. The procedures for determining whether it is economically worthwhile to seize a particular asset were set forth in guidelines issued to all U.S. Attorneys on June 25,

1986, by then Deputy Attorney General D. Lowell Jensen. These guidelines require that, in advance of executing a seizure, a rigorous review of known and potential third party interests in a targeted property be identified, as well as other known or potential difficulties that would confront us in managing and ultimately disposing of the targeted property. In addition, DEA and FBI apply identical minimum value thresholds for seizures of property for forfeiture. The violator's equity (at wholesale value) must be at least $2,500 for automobiles, $5,000 for boats and aircraft, $1,000 for cash and jewelry, and $10,000 for real estate. These thresholds are intended to provide basic assurance that the forfeiture program will be executed in a cost effective manner. While higher thresholds would tend to increase cost effectiveness, they would also tend to diminish the impact of the forfeiture program as an instrument of law enforcement. In some judicial districts, especially on the west coast, the United States Attorneys have increased these thresholds as needed in order to ensure that available forfeiture resources are used efficiently.

However, forfeiture is used not only to strip profits from criminals, but also to deprive them of the instrumentalities of their criminal activities. In a given case, a forfeiture could result in a net loss to the United States, but would be pursued if the forfeiture served to abate the illegal activity.

I would like to emphasize that it is critical to the success of the forfeiture program for the Department of Justice to have a

reliable and secure source of funding for asset seizure and forfeiture-related expenses. It is difficult to overstate the positive impact the Justice Assets Forfeiture Fund has had on the Department's forfeiture efforts. As the Department continues in its determination to dismantle criminal organizations by depriving criminals of their lifeblood -- the illegal profits and proceeds of crime -- the Assets Forfeiture Fund has become in turn the lifeblood of its asset seizure and forfeiture initiative.

Recent discussions among some members of Congress and the Administration have focused on the possibility of moving the Fund "off-budget". Presently, obligations against the Fund are entirely offset by proceeds from forfeitures. Since the inception of the Fund in 1985, income has exceeded obligations every year. However, since obligations are required to be considered independently from income under current scorekeeping rules, the Department is, in effect, being penalized for its success in vigorously pursuing forfeitures. We appreciate any consideration Congress can give to alleviating this unfortunate situation.

This concludes my statement Mr. Chairman. Thank you for the opportunity to appear before the Subcommittee. I will be happy to answer any questions you or the Subcommittee members may have at this time.

STATEMENT OF

WILLIAM F. RILEY
COMPTROLLER
U.S. CUSTOMS SERVICE

BEFORE THE

SUBCOMMITTEE ON FEDERAL SPENDING
BUDGET AND ACCOUNTING
UNITED STATES SENATE

JUNE 23, 1988

GOOD MORNING.

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE, I AM PLEASED TO BE HERE TODAY TO DISCUSS THE CUSTOMS SEIZED PROPERTY/CURRENCY PROGRAM AND FORFEITURE FUND.

LET ME INTRODUCE MYSELF. I AM WILLIAM RILEY, COMPTROLLER OF THE U.S. CUSTOMS SERVICE. WITH ME TODAY ARE: ROBERT HAMILTON, CHIEF, REVENUE BRANCH OF THE U.S. CUSTOMS NATIONAL FINANCE CENTER; AND KAREN ROBB, DIRECTOR OF THE OFFICE OF LOGISTICS MANAGEMENT.

MR. CHAIRMAN, I AM HAPPY TO REPORT THAT THE CUSTOMS SERVICE IS CONTINUING TO MAKE CONSIDERABLE PROGRESS IN PURSUING OPPORTUNITIES PRESENTED BY THE COMPREHENSIVE CRIME CONTROL ACT OF 1984, AND THE TRADE AND TARIFF ACT OF 1984. THESE ACTS HAVE GIVEN US THE MEANS TO APPLY INNOVATIVE SOLUTIONS TO LONG-STANDING PROBLEMS, AND CREATED POSSIBILITIES FOR FURTHER IMPROVEMENTS THAT WILL SAVE TAX DOLLARS AND STRENGTHEN CUSTOMS AND LOCAL LAW ENFORCEMENT IN OUR WAR AGAINST DRUG TRAFFICKING.

SPECIFICALLY, CUSTOMS HAS MADE CONSIDERABLE PROGRESS IN THE PROCESSING OF SEIZED PROPERTY IN MIAMI. PROLONGED AND VIGOROUS EFFORTS TO STREAMLINE ADJUDICATORY AND FORFEITURE PROCEDURES, COMBINED WITH THE EFFORTS OF OUR SEIZED PROPERTY CONTRACTOR, HAVE RESULTED IN CURRENT SEIZED PROPERTY INVENTORIES THAT REFLECT MORE TIMELY FORFEITURE AND DISPOSITION PROCESSING DESPITE A HIGH VOLUME OF COMPLEX CASES.

THE LEVEL OF COOPERATION AND ASSET SHARING, WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES, CONTINUES TO RISE. ASSET SHARING TRANSACTIONS INCLUDING CASH AND PROPERTY TO THESE AGENCIES TOTALLED $11.9 MILLION FOR FY'86 AND '87 COMBINED. ASSET SHARING REQUESTS, FY'88 TO DATE, TOTAL OVER $33 MILLION. $3 MILLION IN ASSETS HAVE ACTUALLY BEEN TRANSFERRED.

CUSTOMS HAS MADE SIGNIFICANT PROGRESS IN ACCOUNTING FOR AND TRACKING THE STATUS OF SEIZED CURRENCY AND OTHER MONETARY INSTRUMENTS. A NATIONAL POLICY, SUPPORTED BY A CENTRALIZED SERVICEWIDE CONTROL CAPABILITY, WAS ESTABLISHED IN JULY, 1987. SIMULTANEOUSLY, SPECIFIC INSTRUCTIONS WERE ISSUED TO ALL CUSTOMS FIELD OFFICES THAT PROVIDE FOR DUE PROCESS AND TIMELY DEPOSIT OF CURRENCY IN GOVERNMENT RECEIPT ACCOUNTS.

AS OF JUNE 10, 1988, CUSTOMS HAS $118 MILLION IN OPEN MONETARY INSTRUMENT SEIZURE CASES OF WHICH, $84 MILLION OF OPEN MONETARY INSTRUMENT SEIZURE CASES HAS BEEN DEPOSITED IN GOVERNMENT RECEIPT ACCOUNTS. WE RECOGNIZE THAT THERE IS MORE TO BE DONE HERE. NINETEEN MILLION DOLLARS REMAINS IN VAULTS AS EVIDENTIARY, $13 MILLION IS IN INTEREST BEARING ACCOUNTS BASED ON AGREEMENTS WITH VIOLATORS AND THE REMAINING $2 MILLION INVOLVES PARTIAL SETTLEMENTS. WE ARE REVIEWING AND MONITORING ALL EVIDENTIARY CASES TO IDENTIFY SEIZURES THAT CAN BE RECLASSIFIED AS NON-EVIDENTIARY AND MADE ELIGIBLE FOR DEPOSIT. IN ADDITION, IN ORDER TO MAXIMIZE USE OF ALL AVAILABLE RESOURCES WE ARE WORKING TO ASSURE THAT SEIZURES ARE TIMELY FORFEITED AND PROPERLY DISPOSED.

WE RECOGNIZE THAT THE CUSTOMS SERVICE FORFEITURE FUND, AS CURRENTLY CONSTRUCTED, REQUIRES A CUMBERSOME PROCESS OF ACCOUNTING AND REPORTING TO EFFECTIVELY IMPLEMENT APPLICABLE PROVISIONS OF THE TARIFF ACT OF 1930, AS AMENDED, AND THE COMPREHENSIVE CRIME ACT OF 1984. GAO HAS RECOMMENDED THAT LEGISLATION BE PROPOSED TO PROVIDE FOR ACCOUNTING OF ALL RECEIPTS AND DISBURSEMENTS FROM THE FUND. WE CONCUR WITH THIS RECOMMENDATION AND HAVE BEEN WORKING WITH GAO IN SUPPORT OF EFFORTS TO INTRODUCE LEGISLATION TO ACCOMPLISH THIS PURPOSE.

IN CONCLUSION, I WOULD LIKE TO NOTE THAT THE CUSTOMS SERVICE WILL CONTINUE TO BUILD ON ITS SUCCESS AND STRIVE TO TAKE FULL ADVANTAGE OF THE OPPORTUNITIES PRESENTED BY THE CRIME CONTROL ACT OF 1984.

I THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE THE SUBCOMMITTEE TODAY. I WOULD BE HAPPY TO ENTERTAIN ANY QUESTIONS YOU MIGHT HAVE.

MR. RILEY'S RESPONSES TO WRITTEN QUESTIONS

Question:

Please let Senator Chiles know the result of Mr. Rosenblatt's work regarding reviewing the New York case load.

Answer:

We have been in contact with the Department of Justice (DOJ), Asset Forfeiture Office, and the Assistant Attorney, Eastern District New York. We have agreed that each case at JFK Airport should be reviewed and evaluated, based on its own unique set of facts. I have directed that the New York Regional office assist the AUSA in this review, to be finalized by September 30, 1988. I have also requested a bimonthly progress report from the Region, until the task is complete.

Question:

What is the average wait time for transferring seized property to state and local agencies?

Answer:

Concerning the request for the average time it takes local agencies to receive shared assets, from seizure to transfer, the following averages are derived from FY 1988 transfer.

	SEIZURE TO FORFEITURE	FORFEITURE TO APPROVAL	APPROVAL TO TRANSFER	TOTAL
ADMINISTRATIVE	5.8 Months	1.1 Months	1.5 Months	8.4
JUDICIAL	11.8 Months	1.1 Months	1.5 Months	14.4

Question:

Provide a breakdown of real property, cash conveyances, and other property, and which assets are shared with state and local governments.

Answer:

See attached lists.

Question:

Do you have any estimate of what kind of interest that you have made off of these seized cash that you have now put into interest bearing accounts?

Answer:

The estimated interest cost savings to the U.S. Government due to Customs depositing of non-evidentiary seized currency/monetary instruments to Treasury Receipt Accounts is $2 million for the period July 1987 through June 1988.

Question:

Are you able to tell us how much cash has been deposited in the fund during the past year as opposed to what was deposited in the 12 months prior to our first hearing on this issue in March of 1987?

Answer:

In the 12 month period prior to the hearing in March 1987, Customs basically kept seized currency/monetary instruments in vaults and made no deposits until forfeiture action was complete. Approximately $58 million was deposited to the Customs Forfeiture Fund during that period. In July 1987, Customs began depositing non-evidentiary currency/monetary instruments into Treasury Receipt Accounts prior to forfeiture. From March 1987 through June 30, 1988, approximately $122 million has been deposited into Treasury Receipt Accounts pending forfeiture. The balance in Treasury Receipt Accounts as of June 30, 1988, is $85 million.

In addition, as requested we have reviewed the status of the $19 million in seized monetary instruments remaining in an evidentiary category, pending deposit, as of June 10, 1988. We testified that most of the undeposited currency was seized at Kennedy Airport and that we have been unable to resolve with the U.S. Attorney in New York the issues preventing these seizures from being deposited. We can now advise that immediately following the hearing our Office of Enforcement was contacted by Justice Department officials concerning the specific actions that can be taken to assure timely deposit of currency seizures at Kennedy Airport. We are coordinating the necessary actions with the U.S. Attorney in New York and expect that the deposit of currency seizures will be processed expeditiously.

CUSTOMS SEIZED PROPERTY INVENTORY

JUNE 23, 1988

Number	Commodity	Value
3174	Vehicles	$ 20,304,439
305	Vessels	15,271,564
156	Aircraft	14,557,828
15	Real Estate	3,059,192
5364	General Property	110,253,598
9014		$163,446,621

CUSTOMS SEIZED REAL ESTATE

JUNE 23, 1988

Commercial	Value	Liens	Net Equity
Miami, Fl (Warehouse)	$ 60,000	0	$ 60,000
Miami, Fl "	180,000	19,156	160,844
Miami, Fl "	32,000	0	32,000
Totals Commercial	272,000	19,156	252,844
Residential/Single Family			
Cudjoe Key, Fl	119,000	0	119,000
Key Largo, Fl	385,192	0	385,192
Everglandes, Fl	250,000	0	250,000
Mico, Fl	500,000	0	500,000
Parkland, Fl	225,000	157,000	68,000
Kawaihaw, Hawaii	360,000	0	360,000
Bonita, Calif.	180,000	129,007	50,993
Hacienda, Calif.	235,000	0	235,000
Sandy Valley, Nev.	63,000	30,000	33,000
Tucson, Ariz.	220,000	0	220,000
Totals Res/S.F.	2,537,192	316,007	2,221,185
Mixed Res/Commercial			
Marshall, Calif.	200,000	0	200,000
Residential/Duplex			
Richland, Washington	50,000	0	50,000
TOTALS	3,059,192	335,163	2,724,029

JUN 23 1988

CUSTOMS SEIZED PROPERTY PROGRAM

ESTIMATED REVENUE FROM SALE OF SEIZED REAL ESTATE

	Atlantic Marina Miami, Fl.	Residence Miami, Fl.	Residence Miami, Fl.
Sale Revenue	$890,000	$91,000	$62,000
Other Income	62,507	0	0
Total Revenue	952,507	91,000	62,000
Holding Costs*	55,638	16,977	633
Sale Expense	27,858	1,941	1,768
Total Costs	83,496	18,918	2,401
Est. Liens & Accrued Int.	803,600	0	33,345
Est. Net Revenue	65,411	72,082	26,254

*Holding Costs include management fees, security, maintenance, and refurbishment/repair for sale.

CUSTOMS ASSET SHARING PROGRAM

FY 1988 through 4-30-88

SUMMARY BY REGION

REGION	ASSETS TRANSFERRED	PENDING REQUESTS	TOTAL
NORTHEAST	$ -0-	$ 122,433	$ 122,433
NEW YORK	-0-	566,010	566,010
SOUTHEAST	1,526,638	2,611,363	4,138,001
SOUTH CENTRAL	6,800	439,081	445,881
SOUTHWEST	80,016	614,878	694,894
PACIFIC	1,352,998	24,664,371	26,017,369
NORTH CENTRAL	25,745	1,048,260	1,074,005
TOTAL	$ 2,992,197	$ 30,066,396	$ 33,058,593

Totals include asset sharing and discontinuance actions. Deferred actions are not included.

CUSTOMS ASSET SHARING PROGRAM

FY 1988 through 4-30-88

SUMMARY BY CATEGORY

CATEGORY	ASSETS TRANSFERRED	PENDING REQUESTS	TOTAL
VEHICLES	$ 108,970	$ 245,022	$ 353,992
VESSELS	392,102	2,468,295	2,860,397
AIRCRAFT	506,049	1,473,000	1,979,049
GEN. PROPERTY	5,110	338,090	343,200
CURRENCY	1,979,966	25,541,989	27,521,955
TOTAL	$ 2,992,197	30,066,396	33,058,593

Totals include asset sharing and discontinuance actions. Deferred actions are not included.

ASSET SHARING TRANSACTIONS FOR FISCAL YEARS 1986 & 1987

REGION	FY 1986*	FY 1987*	TOTAL
NORTHEAST	$ 64,815	$ 115,551	$ 180,366
NEW YORK	-0-	1,019,088	1,019,088
SOUTHEAST	1,280,787	1,509,686	2,790,473
SOUTH CENTRAL	89,125	40,000	129,125
SOUTHWEST	2,756,704**	201,077	2,957,781
PACIFIC	560,122	3,301,174	3,861,296
NORTH CENTRAL	149,030	49,900	198,930
TOTAL	$ 4,900,583	$ 6,236,476	$ 11,137,059

* FY 86 and FY 87 data collection procedures do not permit precise identification of shared asset totals. These figures are not exact, but do correctly reflect trends in the program.

** 2 large currency cases account for most of the FY 1986 total for the Southwest Region.